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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 69, No. 50
Monday, March 15, 2004

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AH03

Extra Long Staple Cotton Outside Storage and Strength Adjustment for Loan

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule revises and adopts as final an interim rule published on August 18, 2003. The Commodity Credit Corporation (CCC) uses these regulations to provide marketing assistance loans for extra long staple (ELS) cotton that is stored outside while pledged as loan collateral. This final rule revises the interim rule in three ways. First, it more generally states the rainfall requirement applicable to approved storage areas. Second, it makes warehouse-receipted ELS cotton ineligible for this loan. And third, it establishes that the loan rate provided for this outside-stored loan will be the national average loan rate without application of any premiums and discounts. This rule also establishes that, effective for the 2004 crop of cotton, ELS cotton must be of a strength, and other factors, specified in CCC's schedule of loan rates for ELS to be eligible for loans. The rule will allow CCC to adjust its ELS cotton loan rate to reflect market adjustments for strength and other factors so that loan collateral is marketed and forfeitures to CCC are minimized.

DATES: This rule is effective March 15, 2004.

FOR FURTHER INFORMATION CONTACT: John Johnson, Deputy Administrator for Farm Programs, Farm Service Agency, at (202) 720–3175, or via e-mail at *johnjohnson@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

CCC is amending the existing regulations that allow outside storage of ELS loan collateral by producers. CCC regulations have historically required ELS loan collateral to be represented by a warehouse receipt and that such collateral be within an approved warehouse when a loan has been made on such cotton. The amended regulations provide that loans will be made on ELS cotton not represented by a warehouse receipt and stored outside but that otherwise meets the packaging and storage requirements of this rule.

CCC is making this change to reduce the costs to producers of storing ELS cotton in areas of the country where outside storage is a cost-effective and accepted industry practice. CCC has determined that outside storage may be effective in lowering the costs of ELS cotton storage with minimal increased risk.

CCC published an interim rule implementing this provision on August 18, 2003 at 68 FR 49327. CCC received 36 timely letters containing 24 different comments. Respondents included 5 national organizations, 6 local organizations, and 25 individuals or companies. Comments were received from the States of California, Georgia, Tennessee, Washington, and the District of Columbia.

In this rule, CCC is also amending regulations at 7 CFR part 1427 to provide that ELS cotton must be of a strength, and other factors, specified in a schedule of loan rate premiums and discounts for loan and LDP eligibility. This regulation is effective for the 2004 and subsequent crops of ELS cotton.

This regulatory change arises from the availability of a new ELS hybrid variety that is high-yielding but that has an elevated incidence of low-strength. ELS cotton comes from the species *Gossypium barbadense,* which varies from upland cotton primarily in staple length and strength. According to United States standards, cotton is considered to be ELS cotton if it is 1 3/8 inch long or longer. Generally, ELS cotton strength and uniformity measurements are also considerably higher than those of upland cotton. Because of these special characteristics, ELS cotton generally commands a market price above that of upland cotton and is provided a higher loan value by CCC. There is concern that this new variety may be less marketable than other ELS cotton because of its lower strength.

Production of the new ELS hybrid is expected to expand due to its high yield. Because it may be less marketable than other ELS cotton, there is concern of increased forfeitures of this new cotton variety to CCC under the agency's loan program unless the CCC loan value for cotton can be adjusted to reflect market discounts for low strength. To address this concern, this rule establishes that to be eligible for a CCC loan, ELS cotton must be of a strength and other factors specified in the schedule of ELS loan rates and premiums and discounts. CCC will establish such loan adjustments based on market price observations of the Agricultural Marketing Service.

Discussion of Comments and Changes

The comments received, and changes made to the interim rule, are addressed in the sequence of the final rule, are as follows:

Approved Packaging Materials

Five comments urge USDA not to accept cotton as loan collateral unless it is packaged using materials approved by the Joint Cotton Industry Bale Packaging Committee (JCIBPC). JCIBPC has never specifically approved packaging materials or ties for outside storage. The respondents stated that USDA, for many years, has required the use of industry-approved materials as a condition for loan eligibility, and the adoption of the interim rule would end that assumed joint support for JCIBPC standards.

CCC values the work of the JCIBPC but concludes that the testing and approval functions of the JCIBPC do not need to apply to outside-stored cotton. This is because, under the terms of the revised regulations, the producer of the cotton, in requesting this loan, voluntarily assumes all responsibility and risk related to maintaining the quality of outside-stored cotton. This is different from the need for established packaging standards for warehouse-stored cotton where the packaging standards reduce CCC's risk related to

quality maintenance. CCC will continue to require that warehouse-stored cotton be packaged in materials approved by the JCIBPC.

Limit the Applicable Time and Area for Outside Storage

Three comments request that area eligible for outside storage not be expanded and the program not be allowed beyond 2003. CCC plans to not expand the program beyond the initially approved areas. However, the program will be available in future years. A test period to evaluate this change serves no purpose since outside storage has already been demonstrated successfully. Therefore, CCC sees no need to test this change before implementing it or to limit it to the 2003 crop year.

Warehouse Receipts for ELS Cotton

This rule also provides that CCC will offer outside-stored ELS loans only on the basis of the gin code, bale number, and bale weight, and will not permit another entity to hold negotiable warehouse receipts for loan collateral. This is consistent with CCC requirements for farm-stored grain, oilseed, and rice loans. These loans are similar to this new cotton loan in several respects, and for such loans CCC does not permit another entity to hold negotiable warehouse receipts. This is mainly because, for farm-stored loans, CCC does not inspect, and bears no legal responsibility for, the condition of the storage site; loan rates are based on the national average rate or local rates; and, warehouse receipts do not represent the collateral. CCC acceptance of a warehouse receipt as collateral for an outside-stored ELS loan program would imply CCC inspection and approval of storage locations and could imply to buyers that the cotton is in a warehouse. Thus, this final rule provides that warehouse-receipted ELS cotton is ineligible for an outside-stored cotton loan.

One respondent stated that permitting collateral for this loan program to not have a warehouse receipt could cause marketing problems. CCC understands that the electronic warehouse receipt (EWR) is the basis of cotton trading and that cotton not so represented may be less marketable in some circumstances. However, even under the traditional loan requirements, some cotton, including upland cotton, has been directly marketed after ginning without being receipted by a warehouse. Producers engaged in direct cotton marketing have always been able to consider the need to have their cotton receipted, and CCC has never required receipting as a condition of eligibility for loan deficiency payments. Consistent with those past practices, CCC considers it appropriate to allow producers to weigh the marketing implications of receipting, without requiring receipting for all program benefits.

Standards for Approved Storage

One respondent supports outside storage within a system that has been proven over many years, but is concerned about overly broad approval for all types of outside storage. Further, two respondents stated that the interim rule failed to provide appropriate engineering standards for either the outside location or the packaging materials. One respondent presented material concerning an outside packaging and storage system that has been commercially successful for many years, and urged CCC to adopt similar standards. CCC agrees with these respondents, and, as a result, the final rule allows outside storage only under conditions that have been commercially successful. CCC has adopted, within the rule, standards for the storage area and packaging that have been successfully used for outside-stored cotton for many years.

One respondent stated that allowing any commercial entity to self-certify that they meet the storage standards is not sufficient to protect CCC's financial interests. CCC disagrees with this view. The rule specifies in section 1427.10 that the producer must certify to several requirements for outside storage sites in the loan application. For many years, producer certification of storage suitability for loan collateral has been used for CCC farm-stored loans for grains and rice, and this certification process has been adequate. CCC concludes that the storage savings and marketing benefits of this loan should not be denied to producers willing to assume the risks associated with outside storage of cotton.

Perfection of CCC Security Interest

One respondent stated that if CCC does not hold title to loan collateral, CCC's risk is increased, as are opportunities for the cotton to be used more than once as loan collateral. CCC's legal interest in the cotton is the same whether the cotton itself serves as collateral or whether a warehouse receipt representing the cotton is held as collateral. As with other commodity loans, CCC will file financing statements following state law procedures. Further, CCC's risk from this rule is consistent with other farm-stored program crops. Under this cotton loan, CCC will further reduce its risk by calculating the settlement value of forfeited collateral based on its delivered quality. Also, the collateral for these loans will be subject to spot inspections. Thus, this comment was not adopted in the final rule.

Maximum Rainfall and Limiting Program to ELS

A respondent stated that CCC did not sufficiently support its decision to restrict outside storage to areas with 10-inches per year maximum rainfall, and to ELS cotton. The respondent stated that, as a result, the rule contains restrictive provisions that are arbitrary and vulnerable to a legal challenge. The respondent provided no technical information that would contradict the CCC determination and support extending this program for upland cotton, in higher rainfall or humidity areas.

After careful consideration, CCC limited this new loan to ELS cotton in low-rainfall areas, and excluded upland cotton, after concluding that humidity levels, rainfall amounts, and bale packaging practices in upland cotton producing areas may make outside storage impractical for such cotton. Additionally, all other comments opposed expanding the program beyond that prescribed in the interim rule. Nonetheless, the final rule is revised so that the rainfall threshold for approved storage areas may or may not be defined as entire counties. National rainfall data shows that such records are not always established by county borders, as CCC assumed in the interim rule. These records may reflect the area near the weather station and not necessarily county average rainfall. Accordingly, in the final rule specific references to 10 inches have been removed to ease administration of this standard. CCC anticipates that this rule will be implemented by limiting approved storage areas to areas for which the official 10-year average annual rainfall is 10 inches or less.

Liability to the Producer

The interim rule provides that a producer certify as to the packaging, storage, and handling requirements of the rule. One comment states that producers cannot certify to requirements that are beyond their control, or to standards that do not exist. CCC does not feel that this is a problem. Under this option, the required producer certifications relate to technical requirements of the ginner or storage provider selected by the producer. Gins and entities providing storage are able to inform producers if their services meet the standards proscribed by the rule. Therefore, as

with all other commodity loans, CCC feels that certification by the producer is appropriate, and sufficient. As in other farm-stored loan programs, producers must maintain the quality of the commodity; thus, it is reasonable for producers to acquire the required bagging, storage, and handling services just as they have done under ordinary warehouse loans.

The interim rule at section 1427.5(b)(10) requires that materials approved by the JCIBPC may be used, and that JCIBPC approval is not required for outside-stored cotton. This section requires only that packaging materials used for outside storage must meet industry standards for bag characteristics such as size, tear and impact resistance, and tie characteristics such as elongation, and break and joint strength.

In a related comment, a respondent stated that some producers will not maintain either the cotton or the facility as specified by regulations, and suggested withdrawing the rule. CCC does not expect producers to knowingly place their production at risk under this new loan option any more than they would under other loan programs. CCC does not deny loan eligibility to warehouse-stored loan cotton even though there are occasional lapses by gins or warehouses to meet storage and bagging requirements, so long as CCC has determined that its interests are protected. Therefore, this comment was not adopted.

Based upon the comments received, and consistent with CCC management of other farm-stored commodity loans, it is appropriate that producers who apply for this loan fully understand that they must accept the risk of quality maintenance of outside stored cotton. These risks are contained in the producer certification that must be signed as part of the note and security agreement for this loan. Consistent with the terms of this loan, the final rule is amended in § 1427.18(k)(2) to provide a more complete list of certifications required to be made by the producer to obtain an outside-stored ELS loan.

Bale Sampling

One respondent stated that sampling a hermetically sealed bag will void the bag seal, requiring re-bagging of the bale. CCC does not feel that sampling will be a problem. Under conventional ginning and bale-sampling procedures, initial bale sampling occurs at the gin before the bale is bagged and sealed. Any subsequent sampling required by CCC would occur after the bale has been moved inside an approved cotton warehouse. A broken seal, in such location, would not cause the cotton quality to deteriorate.

Guaranteed Minimum Loan Rate

Another respondent stated that the transfer of risks to the individual ELS cotton producer may undermine the CCC "guaranteed minimum loan rate" because charges on forfeited cotton may exceed the loan value. Assumption of risk by producers has not undermined other farm-stored type loans and CCC does not see this risk transfer as affecting its responsibilities under the program. CCC loans do not guarantee that a minimum loan value is provided on an individual basis. Thus, CCC does not expect this loan to reduce the average loan value of ELS cotton.

Outside Storage Is Inadequate

One respondent states that CCC's requirement that forfeited collateral must be delivered into a warehouse is an admission that outside storage is inadequate to protect CCC's interests. The respondent feels that such cotton is more likely to be forfeited. Further, they stated that the program has no financial security arrangements, as with warehouses, to address the increased risk and ensure that the owners of storage areas fulfill their obligations under the regulation. A related comment, from another respondent, was that there will be weather damage to outside-stored cotton and collecting damages from the gin or grower will be impossible.

CCC has determined that outside storage of ELS cotton is a viable option as provided in this rule. The agency has a long history of providing commodity marketing assistance loans on collateral that is not warehouse-stored. Under such loans, the risk of quality maintenance is primarily borne by the producer. When loan collateral is warehouse-stored, the risk is borne by the warehouse and the producer. In neither case does CCC bear the responsibility for maintaining the quality of the loan collateral prior to any forfeiture that may occur. CCC will protect its interests under this loan because any value loss is restored though the loan settlement process.

CCC's experience with farm-stored loans is that forfeiture decisions are based on market price levels. Quality loss resulting from poor producer storage management has not been shown to increase forfeitures. Participating producers must certify that their storage meets the regulatory requirements and assume the risk for the cotton while stored outside. Any obligation by the owners of a storage area to fulfill their obligations under this regulation would be obligations to the producer. CCC has no reason to regulate agreements between producers and outside storage providers. CCC anticipates that producers and merchants alike understand the specialized bagging and handling needed to protect outside-stored cotton. Collection of any loan overages on damaged cotton will be no more problematic for CCC than are such collections under existing farm-stored loans for other commodities. However, based on the comments received, the final rule is revised to emphasize that producer certifications are required with a loan application, and that producers are responsible for maintaining the quality of loan collateral stored outside.

Other General Comments

Three respondents stated that the approval process of the rule lacks objectivity, and thus fails to meet minimum standards for administrative rulemaking. During the comment period, CCC received considerable evidence that, as provided by the provisions of this program, ELS cotton can be successfully stored outside. Thus, the agency feels that it has sufficient basis for promulgating this rule.

Four comments state that commercial entities have invested in warehouses under existing loan eligibility requirements that were created to protect cotton, and that inside storage of cotton remains a valid purpose today. Two additional respondents stated that the rule creates an unfair competitive advantage due to lower costs incurred by those who store cotton outside: Outside storage has been successfully demonstrated under carefully managed circumstances. CCC's past policy of requiring inside storage as a condition of loan eligibility has imposed increased costs on cotton where, in limited circumstances, lower-cost storage can be used. This result is contrary to the program objective of assisting commodity marketings of producers.

Six comments state that bypassing traditional protections and oversight by the JCIBPC is counter to demonstrating quality control in export markets. Quality reductions will reduce the industry's reputation for quality in export markets and reduce the ability to obtain quality premiums, if not export volume. To reduce these concerns, CCC will not allow outside storage, or relaxed packaging standards, for all types of cotton or all production areas. CCC established requirements for this loan that restrict its availability. CCC's view is that this loan will not reduce exports, and may even increase exports

if it helps producers reduce marketing costs.

CCC received 24 comments that this rule will insure protection of cotton and afford an opportunity to reduce costs in areas where such storage is accepted practice. Those respondents further state that the rule provides a voluntary alternative to reduce costs in areas where producers are economically disadvantaged.

One respondent stated that processing loans under this rule will initially require a manual process and any automation modifications will not be timely for 2003-crop loan applications. CCC acknowledges that until automation revisions occur, such loans will be processed based on the weight of the cotton and the national average ELS loan rate. This manual process is immediately available and will not impede the administration of the program.

One respondent supports the rule as written, and three respondents request that the rule be reconsidered or repealed. These comments were submitted without any additional explanations.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, which include those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Because this rule involves technical storage and packaging requirements, it was determined that it was in the public's interest to solicit comments on the interim rule. The final rule is effective upon publication in order to provide its benefit to producers for 2003, and because the rule is consistent with successfully used commercial storage practices.

Executive Order 12866

This rule has been has been designated "not significant under Executive Order 12866" and therefore has not been reviewed by the Office of Management and Budget.

Federal Assistance Programs

This final rule applies to the following Federal assistance program, as found in the Catalog of Federal Domestic Assistance: 10.051—Commodity Loans and Loan Deficiency Payments.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it and is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that these regulations may be promulgated and the programs administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Forms used under this regulation will be available on the agency's Internet web site. Loan forms may be submitted electronically by users that have met CCC electronic authentication requirements.

List of Subjects in 7 CFR Part 1427

Agricultural commodities, Cottonseeds, Price support programs, Warehouses.

■ Accordingly, the interim rule amending 7 CFR part 1427 which was published at 68 FR 49327 on August 18, 2003, is adopted as a final rule with the following changes:

PART 1427—COTTON

■ 1. The authority citation for part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931–7939; and 15 U.S.C. 714b and 714c.

■ 2. Amend § 1427.5 by revising paragraph (c)(1) to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(c) * * *

(1) Be of a grade, strength, staple length, and other factors specified in the schedule of loan rates for ELS cotton;

* * * * *

■ 3. Amend § 1427.10 by revising paragraphs (e)(1) and (e)(3) to read as follows:

§ 1427.10 Approved storage.

* * * * *

(e) * * *

(1) At a commercial entity that is involved in the handling or storage of cotton in a county or area determined and announced by CCC as approved for outside storage of loan collateral;

(2) * * *

(3) As otherwise provided in the loan agreement. The collateral for such loan shall be as specified in the loan agreement and may include the actual bale of cotton.

■ 4. Amend § 1427.18 by revising paragraph (k)(2)(i) to read as follows:

§ 1427.18 Liability of the producer.

* * * * *

(k) * * *

(2) * * *

(i) Certify the quantity of such cotton on the loan application; certify the cotton is packaged in a hermetically sealed bag with an internal humidity level established by the gin as appropriate to safeguard the cotton; certify that packaging materials meet or exceed industry minimum standards; certify that the storage area is suitable for cotton storage and is in an area approved by CCC; certify that the storage area is constructed to prevent water accumulation under the cotton and is outside a 100-year floodplain; and certify that the storage area is serviced by bale handling and transport equipment that will not damage the sealed bag or degrade the storage area;

* * * * *

Signed in Washington, DC, on March 4, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–5708 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–31–AD; Amendment 39–13519; AD 2004–05–24]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines (Formerly Textron Lycoming) AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Lycoming Engines (Formerly Textron Lycoming) AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines. That action requires replacing certain zinc-plated crankshaft gear retaining bolts. This action retains that requirement, but expands the population of affected engines. In addition, this AD adds five additional kits for replacing the crankshaft gear retaining bolts. This AD results from notification from the Manufacturer of 161 engines not identified in the previous AD. This AD also results from approval of the five additional kits as alternative methods of compliance with AD 2002–23–06. We are issuing this AD to prevent loss of all engine power and possible forced landing.

DATES: Effective March 30, 2004. The Director of the Federal Register approved the incorporation by reference of Lycoming Service Bulletin 554, dated September 30, 2002, on November 19, 2002 (67 FR 68932, November 14, 2002). The Director of the Federal Register approved the incorporation by reference of Lycoming Mandatory Service Bulletin No. 554, Supplement 5, dated August 15, 2003, as of March 30, 2004.

We must receive any comments on this AD by May 14, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781)-238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information referenced in this AD from Lycoming, a Textron Company, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181. You can also access this service information electronically on *http://www.lycoming.textron.com.*

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228 7337; fax (516) 794 5531.

SUPPLEMENTARY INFORMATION: On November 8, 2002, we issued AD 2002–23–06, Amendment 39–12950 (67 FR 68932, November 14, 2002). That AD requires replacing the crankshaft gear retaining bolt:

- Before further flight on engines that have been overhauled or have had the gear retaining bolt replaced between November 27, 1996 and November 10, 1998, and that have not complied with emergency AD 2002–20–51 by using a bolt from the gear bolt replacement kit, 05K19987 and
- Within 10 hours time-in-service (TIS) or 7 days after the effective date of that AD, on engines that have complied with AD 2002–20–51, but did not install a bolt from gear bolt replacement kit, 05K19987, and
- Within 10 hours TIS or 7 days after the effective date of that AD, on engines that have been overhauled in the field, or that have had the gear retaining bolt replaced in the field between November 10, 1998, and the effective date of AD 2002–23–06 (November 19, 2002).

That AD was prompted by two failures of zinc-plated crankshaft gear retaining bolts, and a reassessment of the extent to which the suspect bolts may still be present in the field. That condition, if not corrected, could result in loss of all engine power and possible forced landing.

Actions Since AD 2002–23–06 Was Issued

Since that AD was issued, Lycoming identified 161 additional engines by serial number (SN) that they might have assembled with a zinc-plated crankshaft gear retaining bolt, part number (P/N) STD–2209, during the initial assembly or during a subsequent rebuild or overhaul of the engine. Lycoming also developed five additional kits for other maintenance purposes that also contain replacement gear retaining bolts. We approved those kits as alternate methods of compliance with AD 2002–23–06, and incorporated those kits in this new AD. In addition, any bolt, STD–2209, installed by Lycoming after November 10, 1998, is cadmium plated and is not affected by AD 2002–23–06. This includes STD–2209 bolts installed using Service Bulletin (SB) 554 in production, overhaul, or for any other reason. Lycoming has replaced bolt, STD–2209, with bolt, STD–2247. This new bolt, STD–2247, is not affected by this AD.

Relevant Service Information

We have reviewed and approved the technical contents of Lycoming SB No. 554, dated September 30, 2002, that describes procedures for replacing the existing crankshaft gear retaining bolt. We have also reviewed Lycoming Mandatory SB (MSB) No. 554, Supplement 5, dated August 15, 2003. That MSB provides lists of engine SNs, by engine model, of engines that were assembled with zinc-plated crankshaft gear retaining bolt, P/N STD–2209, during the initial assembly or during a

subsequent rebuild or overhaul of the engine by Lycoming.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other T/L AEIO–540, IO–540, O–540, LTIO–540, and TIO–540 series reciprocating engines of the same type design. We are issuing this AD to prevent the loss of all engine power and possible forced landing. This AD requires replacing the crankshaft gear retaining bolt:

- Before further flight on engines that have been overhauled or have had the gear retaining bolt replaced between November 27, 1996 and November 10, 1998, by Lycoming, that have an engine serial number listed in Lycoming SB 554, and that have not complied with AD 2002–23–06.
- Before further flight on engines that have complied with AD 2002–23–06, but did not install a bolt from gear bolt replacement kits: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, or 05K233367, or with a bolt that has a P/N other than P/N STD–2209.
- Before further flight on engines that have been overhauled in the field, between November 27, 1996 and the affective date of AD 2002–23–06 (November 19, 2002) that have not had the gear retaining bolt replaced with a bolt from kits: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335 or 05K23336, or with a bolt that has a P/N other than P/N STD–2209.
- Within 10 hours TIS or 7 days after the effective date of this AD, whichever occurs earlier, on engines listed by SN in Lycoming MSB No. 554, Supplement 5, dated August 15, 2003.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. 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.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2002–NE–31–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Examining the AD Docket

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this 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. 2002–NE–31–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12950 (67 FR 68932, November 14, 2002) and by adding a new airworthiness directive, Amendment 39–13519, to read as follows:

2004–05–24 Lycoming Engines (Formerly Textron Lycoming): Amendment 39–13519. Docket No. 2002–NE–31–AD. Supersedes AD 2002–23–06, Amendment 39–12950.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2004.

Affected ADs

(b) This AD supersedes AD 2002–23–06, Amendment 39–12950.

Applicability

(c) This AD applies to all Lycoming Engines (Formerly Textron Lycoming) AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines with crankshaft gear retaining bolts, part number (P/N) STD–2209 installed, except:

(1) O–540–F series engines to which AD 99–03–05 applies and on which the bolt has not been subsequently replaced, and

(2) Engines on which the bolt was installed during original assembly or was replaced by Lycoming as specified in Service Bulletin (SB) 554 after November 10, 1998, and

(3) Engines with a bolt P/N STD–2209 supplied as part of a bolt replacement kit

05K19987, 05K23325, 05K23326, 05K23327, 05K23335, or 05K23336, and	(4) Engines with single-drive dual magnetos.	(5) These engines are installed on, but not limited to the following aircraft:

Aero Commander. (500), (500–B), (500–E), (500–U)
Aero Mercantil. Gavilan.
Aerofab. Renegade 250.
Bellanca Aircraft. Aries T–250
Britten-Norman. (BN–2).
Cessna Aircraft. Skylane C–182, Stationair C–206, Turbo Skylane T182T, Turbo Stationair T–206
Christen. Pitts (S–2S), (S–2B).
Commander Aircraft. 114TC, 114B
DeHavilland. (DH–114–2X)
Dornier. (DO–28–B1)
Evangel-Air.
Extra-Flugzeugbau. Extra 300.
Found Bros. (FBA–2C), Centennial (100)
Gippsland. GA–200.
Helio. Military (H–250).
King Engineering. Angel.
Maule. MT–7–260, M–7–260, MX–7–235, MT–7–235, M7–235, Star
Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
Mooney Aircraft. "TLS" M20M.
Moravan. Zlin–50L
Pilatus Britten-Norman. Islander (BN–2A–26), Islander (BN–2A–27), Islander II (BN–2B–26), Islander (BN–2A–21). Trislander (BN–2A–Mark III–2), Islander (BN–2B).
Piper Aircraft. 700P Aerostar, Aerostar 600A, Aerostar 601B, Aerostar 601P, Apache (PA–23 "235"), Aztec (PA–23 "250"), Aztec (PA–23 "250"), Comanche (PA–24 "250"), Comanche (PA–24 "260"), Aztec F, Aztec C (PA–23 "250", Cherokee (PA–24 "250"), Cherokee (PA–28 "235"), Cherokee Six (PA–32 "260", Cherokee Six (PA–32–300). "LANCE", Comanche (PA–24 "150"), Comanche (PA–24 "250"), Comanche (PA–24), Comanche (PA–24 "260"), Comanche 260, Mirage (PA–46–350P, Navajo (PA–31), Navajo (PA–31–300), Navy Aztec (PA–23 "250"), Pawnee (PA–24 "235"), Pawnee (PA–25 "260"), Saratoga (PA–32–300), Brave 300, Sequoia 602P, T–1020, T35, Turbo Aztec (PA–23–250), Turbo Saratoga TC (PA–32–301T)
S.O.C.A.T.A. Rallye 235CA., Rallye 235GT, Rallye 235C, TB–20

Unsafe Condition

(d) This AD results from an expanded population of affected engines, and approval of five kits for replacing the crankshaft gear retaining bolts. We are issuing this AD to prevent the loss of all engine power and possible forced landing.

Compliance

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

Engines That Have Complied With Emergency AD 2002–20–51 or AD 2002–23–06

(f) No further action is required for AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 series engines that have:

(1) A bolt, P/N STD–2209 that was included in bolt replacement kit: 05K19987, 05K23325. 05K23326, 05K23327, 05K23335, 05K23336; or

(2) A bolt P/N STD–2209 that was installed by Lycoming as specified in SB 554 after November 10, 1998; or

(3) A bolt with a P/N other than P/N STD–2209.

(g) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 series engines that have complied with emergency AD 2002–20–51, replace the crankshaft gear retaining bolt with a new bolt that does not have P/N STD–2209, unless the bolt that was installed was:

(1) Included in bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, 05K23336; or

(2) A bolt installed by Lycoming as specified in SB 554 after November 10, 1998; or

(3) A bolt with a P/N other than STD–2209.

(4) You can find information on replacing the retaining bolt in Lycoming SB No. 554, dated September 30, 2002.

Engines Listed by Serial Number (SN) in Lycoming SB 554, Dated September 30, 2002

(h) No further action is required for AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 engines with:

(1) A single-drive dual magneto, and all O–540-F engines to which AD 99–03–05 applies and on which the bolt has not been subsequently replaced with a bolt other than one included in gear bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, 05K23336; or

(2) A bolt replaced by Lycoming as specified in SB 554 after November 10, 1998; or

(3) A bolt, other than P/N STD–2209, including any O–540-F engines listed by SN in Table 1 of Lycoming SB No. 554, dated September 30, 2002.

(i) Before further flight, for all other engines that have an engine SN listed in Table 1 of Lycoming SB No. 554, dated September 30, 2002, replace the crankshaft gear retaining bolt with:

(1) A new bolt included in gear bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, 05K23336; or

(2) A bolt with a P/N other than STD–2209.

(3) You can find information on replacing the retaining bolt in Lycoming SB No. 554, dated September 30, 2002.

Bolts That Have Been Replaced During Field Maintenance or Field Overhaul

(j) Before further flight, replace the crankshaft gear retaining bolt with a new bolt supplied as part of gear bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, 05K23336, or a bolt with a P/N other than P/N STD–2209, if:

(1) The bolt on an O–540-F series engine was replaced after compliance with AD 99–03–05 with a bolt that was not included in bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, 05K23336; or

(2) The bolt on an AEIO, LTIO, IO, O, or TIO–540 series engine was replaced during field maintenance or field overhaul between November 27, 1996, and the effective date of this AD with a bolt that was not included in bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, or 05K23336.

(3) You can find information on replacing the bolt in Lycoming SB No. 554, dated September 30, 2002.

Engines Listed by Serial Number (SN) in Lycoming Mandatory Service Bulletin (MSB) 554, Supplement 5, Dated August 15, 2003

(k) If an engine model and SN is listed in Lycoming MSB 554, Supplement 5, dated August 15, 2003, replace the crankshaft gear retaining bolt within 10 hours TIS, or 7 days after the effective date of this AD, whichever is earlier, with:

(1) A new bolt included in gear bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, 05K23336; or

(2) Bolt STD–2247, or

(3) A bolt with a P/N other than P/N STD–2209.

(4) You can find information on replacing the retaining bolt in Lycoming SB No. 554, dated September 30, 2002.

Recording Gear Bolt Replacement Kit Number

(l) After the effective date of this AD, record the part number of the gear bolt or the number of the gear bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, or 05K23336, in the engine records when recording compliance with this AD.

Prohibition Against Installing Gear Retaining Bolts P/N STD–2209

(m) After the effective date of this AD, do not install any crankshaft gear retaining bolt, P/N STD–2209, except one that is included in a Lycoming gear bolt replacement kit: 05K19987, 05K23325, 05K23326, 05K23327, 05K23335, or 05K23336, onto any engine listed in this AD.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(o) Engine serial numbers are listed in Lycoming Mandatory Service Bulletin No. 554, Supplement 5, dated August 15, 2003; and in Table 1 of Lycoming Service Bulletin No. 554, dated September 30, 2002. The incorporation by reference of Lycoming Service Bulletin No. 554, dated September 30, 2002, was previously approved by the Director of the Federal Register on November 19, 2002 (67 FR 68932, November 14, 2002). The incorporation by reference of Lycoming Mandatory Service Bulletin No. 554, Supplement 5, dated August 15, 2003, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Lycoming, a Textron Company, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181. You can also get this information "www.lycoming.textron.com". You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Burlington, Massachusetts, on March 3, 2004.

Francis A. Favara,

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

[FR Doc. 04–5262 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–14–AD; Amendment 39–13521; AD 2004–05–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires replacement of the cargo control joysticks with new joysticks that include a moisture seal and ventilated cover. This action is necessary to prevent water from being trapped inside the joystick covers, which could result in uncommanded movements of the power drive unit during ground handling of cargo and consequent possible injury to ground personnel. This action is intended to address the identified unsafe condition.

DATES: Effective April 19, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of April 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clint Jones, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6471; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the **Federal Register** on November 28, 2003 (68 FR 66764). That action proposed to require replacement of the cargo control joysticks with new joysticks that include a moisture seal and ventilated cover.

Comments

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

Support for Proposed AD

One commenter concurs with the proposed AD.

Request To Correct Date of Referenced Service Information

One commenter requests that the proposed AD be revised to reference the correct issue date for Boeing Service

Bulletin 777–25–0191. The commenter points out that the correct issue date of that document is September 13, 2001. The FAA agrees and has revised this final rule to correct the typographical error.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 360 airplanes of the affected design in the worldwide fleet. The FAA estimates that 124 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required replacement, and that the average labor rate is $65 per work hour. Required parts will cost approximately $2,200 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $296,980, or $2,395 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–26 Boeing: Amendment 39–13521. Docket 2002–NM–14–AD.

Applicability: Model 777 series airplanes, as listed in Boeing Service Bulletin 777–25–0191, dated September 13, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movements of the power drive unit during ground handling of cargo and consequent possible injury to ground personnel, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the cargo control joysticks with new joysticks, per the Accomplishment Instructions of Boeing Service Bulletin 777–25–0191, dated September 13, 2001.

Parts Installation

(b) As of the effective date of this AD, no person shall install a cargo control joystick, part number S283W602–1 or S283W602–2, on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 777–25–0191, dated September 13, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 19, 2004.

Issued in Renton, Washington, on March 3, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5430 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16647; Directorate Docket No. 2002–NM–203–AD; Amendment 39–13520; AD 2004–05–25]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; Model DC–9–20, –30, –40, and –50 Series Airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models, that requires inspection of the captain's and first officer's seat locking pins for minimum engagement with the detent holes in the seat tracks; inspection of the seat lockpins for excessive wear; and corrective actions, if necessary. This action is necessary to prevent uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation

of the airplane and consequent temporary loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplane models was published in the **Federal Register** on December 11, 2003 (68 FR 69501). That action proposed to require inspection of the captain's and first officer's seat locking pins for minimum engagement with the detent holes in the seat tracks; inspection of the seat lockpins for excessive wear: and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 2,166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,355 airplanes of U.S. registry will be affected by this AD. It will take approximately between 1 and 3 work hours per seat (depending on airplane configuration) to accomplish the required inspection. Each airplane has 2 seats (the captain and first officer seats); therefore, it will take approximately between 2 and 6 work hours per airplane (depending on airplane configuration) to accomplish the required inspection, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $176,150 and $528,450, or between $130 and $390 per airplane, depending on airplane configuration.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–25 McDonnell Douglas: Amendment 39–13520. Docket FAA–2003–16647, Directorate Docket No. 2002–NM–203–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

McDonnell Douglas model	As listed in
DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes.	Boeing Alert Service Bulletin DC9–25A350, Revision 01, dated June 14, 2002.
MD–90–30 airplanes	Boeing Alert Service Bulletin MD90–25A009, Revision 01, dated July 1, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the applicable service bulletins listed in Table 1 of this AD.

Inspection for Engagement and Excessive Wear of the Seat Locking Pins

(b) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD, per the service bulletin.

(1) Do a detailed inspection of the seat locking pin for minimum engagement with the detent holes in the seat track of the captain's and first officer's seat assemblies.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Do a detailed inspection of the seat lock pins for excessive wear.

Corrective Actions

(c) If any discrepancy is detected during the inspections required by paragraph (b) of this AD, before further flight, do the corrective action(s), as applicable, per the service bulletin. Those corrective actions include adjusting/replacing the seat locking pin with a new pin and/or adjusting/repairing/replacing the seat track with a new track.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–25A350, Revision 01, dated June 14, 2002; or Boeing Alert Service Bulletin MD90–25A009, Revision 01, dated July 1, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 19, 2004.

Issued in Renton, Washington, on March 3, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5431 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–238–AD; Amendment 39–13522; AD 2004–05–27]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 Series Airplanes Modified by Supplemental Type Certificate ST00516AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–200 series airplanes modified by Supplemental Type Certificate (STC) ST00516AT, that requires removal of the in-flight entertainment (IFE) system installed per that STC. This action is necessary to eliminate the possibility that the airplane crew could be unable to remove power from the IFE system during a non-normal or emergency situation, which could result in the airplane crew's inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective April 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Kosola and Associates, Inc., 5601 Newton Road, P.O. Box 3529, Albany, Georgia 31706. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Myles Jalalian, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6073; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–200 series airplanes modified by Supplemental Type Certificate (STC) ST00516AT was published in the **Federal Register** on September 4, 2003 (68 FR 52539). That action proposed to require removal of the in-flight entertainment (IFE) system installed per STC ST00516AT.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received. The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 4 Model 737–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $130, or $65 per airplane.

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

planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–27 Boeing: Amendment 39–13522. Docket 2002–NM–238–AD.

Applicability: Model 737–200 series airplanes modified by Supplemental Type Certificate (STC) ST00516AT, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To eliminate the possibility that the airplane crew could be unable to remove power from the in-flight entertainment (IFE) system during a non-normal or emergency situation, which could result in the airplane crew's inability to control smoke or fumes in the airplane flight deck or cabin, accomplish the following:

Removal of IFE System

(a) Within 18 months after the effective date of this AD, remove the IFE system installed by STC ST00516AT per the procedure in Kosola and Associates Service Bulletin 2002–1, dated July 16, 2003. The procedure includes disconnecting the power line that leads from the IFE system control unit to the P6 panel, capping and stowing all related wiring or removing related wiring from the airplane, removing the IFE system circuit breaker from the P6 panel, and removing all components of the IFE system from the airplane.

Inspections Accomplished per Previous Issue of Service Bulletin

(b) Removal of the IFE system installed by STC ST00516AT before the effective date of this AD per Kosola and Associates Service Bulletin 2002–1, dated June 5, 2002, is considered acceptable for compliance with paragraph (a) of this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install an IFE system approved by STC ST00516AT on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Atlanta Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(e) Unless otherwise specified by this AD, the actions shall be done in accordance with Kosola and Associates Service Bulletin 2002–1, dated July 16, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Kosola and Associates, Inc., 5601 Newton Road, P.O. Box 3529, Albany, Georgia 31706. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 19, 2004.

Issued in Renton, Washington, on March 2, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5432 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–12–AD; Amendment 39–13524, AD 2004–05–29]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires installing a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly on each blade of the Quiet Fenestron tail rotor and replacing each blade attachment bushing. This amendment is prompted by the discovery of tail rotor induced vibrations during flight tests. The actions specified by this AD are intended to prevent vibration in the tail rotor and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter.

DATES: Effective April 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on November 24, 2003 (68 FR 65856). That action proposed to require removing each tail rotor attachment bushing, part number (P/N)

365A33–3530–20, and then installing a blade-to-torsion bar attachment tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor at the same time. Mixing the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assembly, P/N 365A33–3546–00, on the same tail rotor hub would be prohibited.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B helicopters. The DGAC advises of a report of the discovery of an increased level of vibration felt by the crew in the pedal units.

Eurocopter has issued Alert Service Bulletin 64A001, dated October 30, 2002 (ASB), which specifies installing a tuning weight assembly, P/N 365A33–3546–00, on each blade of the Fenestron tail rotor. Compliance with this ASB requires prior compliance with Eurocopter Service Bulletin 64–002, dated December 19, 2002 (modifications 0765B35 and 0764B39), which specifies upgrading the Quiet Fenestron tail rotor hub and tail rotor gearbox for embodiment of the tuning weight modification, or Eurocopter Service Bulletin 65–003, dated December 10, 2001 (modification 0765B41), which specifies installing a reinforced control shaft on the tail rotor hub control shaft assembly or both. The DGAC classified service bulletin ASB 64A001, dated October 30, 2002, as mandatory and issued AD No. 2002–621(A), dated December 11, 2002, to ensure the continued airworthiness of these helicopters in France.

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

The FAA estimates that this AD will affect 3 helicopters of U.S. registry and the actions will take approximately 8 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $3,290 and $40 for attaching hardware. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $3,850 for each helicopter, or $11,550 for the entire fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–29 Eurocopter France: Amendment 39–13524. Docket No. 2003–SW–12–AD.

Applicability: Model EC 155B helicopters with an upgraded Quiet Fenestron tail rotor hub, part number (P/N) 365A33–3501–02, with tail rotor attachment bushing, P/N 365A33–3530–20, and tail rotor gearbox, P/N 365A33–6005–04 (without the reinforced control shaft, P/N 365A33–6161–21) or tail rotor gearbox, P/N 365A33–6005–06 (with reinforced control shaft, P/N 365A33–6214–20), installed, certificated in any category.

Compliance: Within 3 months, unless accomplished previously.

To prevent vibration in the tail rotor attachments and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly, P/N 356A33–3546–00, on each blade of the Quiet Fenestron tail rotor in accordance with paragraph 2, Accomplishment Instructions, of Eurocopter France Alert Service Bulletin 64A001, dated October 30, 2002. Replace each of the 10 blade attachment bushings, P/N 365A33–3530–20, at the same time. Do not mix the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assemblies, P/N 365A33–3546–00, on the same tail rotor hub.

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

(c) The installations shall be done in accordance with Eurocopter France Alert Service Bulletin 64A001, dated October 30, 2002. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on April 19, 2004.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–621(A), dated December 11, 2002.

Issued in Fort Worth, Texas, on March 3, 2004.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–5332 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–11–AD; Amendment 39–13523; AD 2004–05–28]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires installing a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly on each blade of the

Quiet Fenestron tail rotor and replacing each blade attachment bushing. This amendment is prompted by the discovery of tail rotor induced vibrations during flight tests. The actions specified by this AD are intended to prevent vibration in the tail rotor and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter.

DATES: Effective April 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on November 24, 2003 (68 FR 65854). That action proposed to require removing each tail rotor attachment bushing, part number (P/N) 365A33–3530–20, and then installing a blade-to-torsion bar attachment tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor at the same time. Mixing the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assembly, P/N 365A33–3546–00, on the same tail rotor hub would be prohibited.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 365 N3 helicopters. The DGAC advises of a report of the discovery of an increased level of vibration felt by the crew in the pedal units.

Eurocopter has issued Alert Service Bulletin (ASB) No. 64.00.23, dated October 30, 2002, which specifies installing a tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor. Compliance with this ASB requires prior compliance with Eurocopter Service Bulletin 64.00.21, dated November 8, 2000 (modification 0761B23, 0765B35, and 0764B39, 40, 41), which specifies installing a Quiet Fenestron tail rotor, and with Eurocopter Service Bulletin 65.00.14, dated January 7, 2002 (modification 0765B41), which specifies installing a reinforced control shaft on the tail rotor hub control shaft assembly. The DGAC classified these service bulletins as mandatory and issued AD No. 2002–622(A), dated December 11, 2002, to ensure the continued airworthiness of these helicopters in France.

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

The FAA estimates that this AD will affect 6 helicopters of U.S. registry and the actions will take approximately 8 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $3,290, and attaching hardware will cost $40. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $3,850 per helicopter, or $23,100 for the entire fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–28 Eurocopter France: Amendment 39–13523. Docket No. 2003-SW–11–AD.

Applicability: Model AS 365 N3 helicopters, with a Quiet Fenestron tail rotor (tail rotor gearbox, part number (P/N) 365A33–6005–06, and tail rotor hub, P/N 365A33–3500–02), tail rotor hub attachment bushings, P/N 365A33–3530–20, and a reinforced control shaft, P/N 365A33–6214–20, on the tail rotor hub control shaft assembly, installed, certificated in any category.

Compliance: Within 3 months, unless accomplished previously.

To prevent vibration in the tail rotor attachments and the pilot's anti-torque pedals, blade pitch control failure, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a tail rotor blade (blade)-to-torsion bar attachment tuning weight assembly, P/N 365A33–3546–00, on each blade of the Quiet Fenestron tail rotor in accordance with paragraph 2, Accomplishment Instructions, of Eurocopter France Alert Service Bulletin 64.00.23, dated October 30, 2002. Replace each of the 10 blade attachment bushings, P/N 365A33–3530–20, at the same time. Do not mix the existing blade attachment bushings, P/N 365A33–3530–20, and the new tuning weight assemblies, P/N 365A33–3546–00, on the same tail rotor hub.

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

(c) The installations shall be done in accordance with Eurocopter France Alert Service Bulletin 64.00.23, dated October 30, 2002. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–

4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on April 19, 2004.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–622(A), dated December 11, 2002.

Issued in Fort Worth, Texas, on March 3, 2004.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–5331 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 105]

Staff Accounting Bulletin No. 105

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin summarizes the views of the staff regarding the application of generally accepted accounting principles to loan commitments accounted for as derivative instruments.

DATES: Effective March 9, 2004.

FOR FURTHER INFORMATION CONTACT: John James, Greg Cross or Eric Schuppenhauer, Office of the Chief Accountant (202) 942–4400, or Louise Dorsey, Division of Corporation Finance (202) 942–2960, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: March 9, 2004.

Jill M. Peterson,

Assistant Secretary.

PART 211—[AMENDED]

■ Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 105 to the table found in subpart B.

Staff Accounting Bulletin No. 105

Note: The text of SAB 105 will not appear in the Code of Federal Regulations.

The staff hereby adds Section DD to Topic 5 of the Staff Accounting Bulletin Series. Topic 5:DD provides guidance regarding loan commitments accounted for as derivative instruments.

Topic 5: Miscellaneous Accounting

* * * * *

DD. Loan Commitments Accounted for as Derivative Instruments

Facts: Bank A enters into a loan commitment with a customer to extend a mortgage loan at a specified rate. Bank A intends to sell the mortgage loan after it is funded. Under Statement No. 133, such a loan commitment should be accounted for as a derivative instrument and measured at fair value.[1] Bank A expects to receive future cash flows related to servicing rights from servicing fees (included in the loan's interest rate or otherwise), late charges, and other ancillary sources, or from selling the servicing rights into the market.

Question 1: In recognizing the loan commitment, may Bank A consider the expected future cash flows related to the associated servicing of the loan?

Interpretive Response: No. The staff believes that incorporating expected future cash flows related to the associated servicing of the loan essentially results in the immediate recognition of a servicing asset. However, servicing assets are to be recognized only once the servicing asset has been contractually separated from the underlying loan by sale or securitization of the loan with servicing retained.[2]

Further, no other internally-developed intangible assets (such as customer relationship intangible assets) should be recorded as part of the loan commitment derivative. Recognition of such assets would only be appropriate in a third-party transaction (for example, the purchase of a loan commitment either individually, in a portfolio, or in a business combination).

Question 2: What disclosures should Bank A provide with respect to loan commitments accounted for as derivative instruments?

Interpretive Response: Bank A should disclose its accounting policy for loan commitments pursuant to APB Opinion No. 22, *Disclosure of Accounting Policies.* Bank A should provide disclosures related to loan commitments accounted for as derivatives, including methods and assumptions used to estimate fair value and any associated hedging strategies, as required by Statement No. 107,[3] Statement No. 133 and Item 305 of Regulation S–K. Additionally, Bank A should provide disclosures required by Item 303 of Regulation S–K and any related interpretive guidance.

Question 3: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: The staff will not object if registrants that have not been applying the accounting described in this bulletin continue to use their existing accounting policies for loan commitments accounted for as derivatives entered into on or before March 31, 2004. For loan commitments accounted for as derivatives and entered into subsequent to that date, the staff expects all registrants to apply the accounting described in this bulletin. Financial statements filed with the Commission before applying the guidance in this bulletin should include disclosures similar to those described in SAB Topic 11:M.

[FR Doc. 04–5731 Filed 3–12–04; 8:45 am]

BILLING CODE 8010–01–P

[1] Paragraph 3 of FASB Statement No. 149, *Amendment of Statement 133 an Derivative Instruments and Hedging Activities*, amended paragraph 6(c) of Statement No. 133, *Accounting far Derivative Instruments and Hedging Activities*, to add: "* * * loan commitments that relate to the origination of mortgage loans that will be held for sale, as discussed in paragraph 21 of FASB Statement No. 65, *Accounting far Martgage Banking Activities* (as amended), shall be accounted for as derivative instruments by the issuer of the loan commitment (that is, the potential lender)." Similar guidance is provided in Statement 133 Implementation Issue No. C13, *Scape Exceptians: When a Loan Commitment Is Included in the Scape af Statement 133.*

[2] *See* paragraph 61 of FASB Statement No. 140, *Accounting far Transfers and Servicing of Financial Assets and Extinguishments af Liabilities.*

[3] FASB Statement No. 107, *Disclasures abaut Fair Value of Financial Instruments.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by Elanco Animal Health. One NADA provides for use of ractopamine and monensin Type A medicated articles to make dry and liquid two-way combination Type B and Type C medicated feeds for cattle fed in confinement for slaughter. The other NADA provides for use of ractopamine, monensin, and tylosin Type A

medicated articles to make dry and liquid three-way combination Type B and Type C medicated feeds for cattle fed in confinement for slaughter.

DATES: This rule is effective March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–225 that provides for use of OPTAFLEXX (ractopamine hydrochloride) and RUMENSIN (monensin sodium) Type A medicated articles to make dry and liquid two-way combination Type B and Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii* in cattle fed in confinement for slaughter during the last 28 to 42 days on feed. Elanco Animal Health also filed NADA 141–224 that provides for use of OPTAFLEXX, RUMENSIN, and TYLAN (tylosin phosphate) Type A medicated articles to make dry and liquid three-way combination Type B and Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes* in cattle fed in confinement for slaughter during the last 28 to 42 days on feed. The NADAs are approved as of January 27, 2004, and the regulations are amended in 21 CFR 558.355, 558.500, and 558.625 are to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.355 is amended by adding paragraph (f)(7)(iii) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(7) * * *

(iii) Ractopamine alone or with tylosin as in § 558.500.

■ 3. Section 558.500 is amended in paragraph (d)(3) after "7.5" by adding "or, if in combination with monensin and/or tylosin, at a pH of 4.5 to 6.0"; and by revising the table in paragraph (e)(2) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(2) *Cattle*—

Ractopame in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 8.2 to 24.6		Cattle fed in confinement for slaughter: For increased rate of weight gain and improved feed efficiency during the last 28 to 42 days on feed	Feed continuously as sole ration during the last 28 to 42 days on feed. Not for animals intended for breeding	000986
(ii) 8.2 to 24.6	Monensin 10 to 30	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*	As in paragraph (e)(2)(i) of this section; see § 558.355(d) of this chapter	000986
(iii) [Reserved]				
(iv) 8.2 to 24.6	Monensin 10 to 30, plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*	As in paragraph (e)(2)(i) of this section; see §§ 558.355(d) and 558.625(c) of this chapter	000986
(v) [Reserved]				
(vi) 9.8 to 24.6		Cattle fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and increased carcass leanness during the last 28 to 42 days on feed	Feed continuously as sole ration during the last 28 to 42 days on feed. Not for animals intended for breeding	000986

Ractopame in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(vii) 9.8 to 24.6	Monensin 10 to 30	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; and for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*	As in paragraph (e)(2)(vi) of this section; see § 558.355(d) of this chapter	000986
(viii) [Reserved]				
(ix) 9.8 to 24.6	Monensin 10 to 30, plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*	As in paragraph (e)(2)(vi) of this section; see §§ 558.355(d) and 558.625(c) of this chapter	000986
(x) [Reserved]				

■ 4. Section 558.625 is amended by revising paragraph (f)(2)(vii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(vii) Ractopamine alone or with monensin as in § 558.500.

* * * * *

Dated: March 3, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–5755 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9117]

RIN 1545–BC96

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations under section 1502 that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These regulations affect corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective March 15, 2004.

Applicability Dates: For dates of applicability, *see* §§ 1.1502–13T(l) and 1.1502–28T(d).

FOR FURTHER INFORMATION CONTACT: Candace Ewell or Marie Milnes-Vasquez at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–132760–03, 68 FR 52542) and temporary regulations (TD 9089, 68 FR 52487) under section 1502 of the Internal Revenue Code. The temporary regulations added § 1.1502–28T, which provides guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income (excluded COD income) and the method for reducing those attributes. Section 1.1502–28T reflects a consolidated approach that is intended to make available for reduction attributes that are available to the debtor member. The regulations contain a rule governing the order in which attributes are reduced and a look-through rule that provides that when the basis of stock of a member (the lower-tier member) that is owned by another member is reduced, the lower-tier member must reduce its attributes as if it had realized excluded COD income in the amount of the basis reduction.

On December 11, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–153319–03, 68 FR 69062) and temporary regulations (TD 9098, 68 FR 69024) under section 1502 amending § 1.1502–28T. Those regulations clarify that certain attributes that arise (or are treated as arising) in a separate return year are subject to reduction when no SRLY limitation applies to the use of such attributes.

The IRS and Treasury Department have received comments regarding certain technical issues that arise under the regulations. The temporary regulations included in this document address certain issues related to the application of section 1245 and the matching rule of § 1.1502–13, and certain issues related to the inclusion of excess loss accounts in cases in which excluded COD income is not fully applied to reduce attributes. The IRS and Treasury Department anticipate that there may be further changes to the regulations but believe that immediate guidance on these issues is desirable. The following sections describe these issues and the manner in which they are addressed in these temporary regulations.

A. Application of Section 1245

Under section 108(b), asset basis is an attribute that is subject to reduction in respect of excluded COD income. Under section 108(b)(5), the taxpayer may elect to apply any portion of excluded COD income to reduce basis in depreciable assets under the rules of section 1017 prior to reducing other attributes.

Section 1017 provides rules that apply in cases in which excluded COD income is applied to reduce the basis of property. Under section 1017(d)(1), any property the basis of which is reduced and which is neither section 1245 property nor section 1250 property is treated as section 1245 property and the basis reduction is treated as a deduction allowed for depreciation. Under section 1017(b)(3)(D), if a corporation that has excluded COD income is a member of a consolidated group, it can elect to treat the stock of another member as depreciable property if that other member consents to a corresponding

reduction in the basis of its depreciable property.

Generally, if section 1245 property is disposed of, the amount by which the lower of (1) the recomputed basis of the property, or (2) in the case of a sale, exchange or involuntary conversion, the amount realized, or (3) in the case of any other disposition, the fair market value of such property, exceeds the adjusted basis of such property is treated as ordinary income (the recapture amount). The recomputed basis is the adjusted basis of property increased by adjustments reflected in that basis that are attributable to deductions allowed or allowable for depreciation or amortization. Application of the recapture rule of section 1245 to property the basis of which has been reduced by reason of the realization of excluded COD income ensures that the character of the income deferred by reason of attribute reduction (*i.e.*, the extra gain that may be recognized on the disposition of an asset the basis of which has been reduced) will be ordinary (even if the asset is held as a capital asset), which character the excluded COD income would have had if it had been included in income when realized.

Commentators have noted that if the basis of subsidiary stock is reduced in respect of a member's excluded COD income and then the basis of the assets of that subsidiary are reduced pursuant to the look-through rule, both the stock of the subsidiary as well as its assets would be treated as section 1245 property. As a result of that treatment, in certain cases, the group may be required to include in income an inappropriate amount of ordinary income. A similar result may obtain if a member consents under section 1017(b)(3)(D) to reduce the basis of its depreciable property when stock of the subsidiary is treated as depreciable property.

For example, assume a member (a higher-tier member) realizes excluded COD income that is applied to reduce the higher-tier member's basis in the stock of another member (a lower-tier member) and, as a result, a corresponding reduction to the basis of property of the lower-tier member is made. The following year, the lower-tier member transfers all of its assets to the higher-tier member in a liquidation to which section 332 applies. Under section 1245, recapture on the lower-tier member's property that is treated as section 1245 property by reason of section 1017(d)(1) is limited to the amount of the gain recognized by the lower-tier member in the liquidation. However, no similar limitation applies to the stock of the lower-tier member that is also treated as section 1245 property. Therefore, the higher-tier member would be required to include as ordinary income the entire recapture amount with respect to the lower-tier member stock. In addition, when the higher-tier member sells the assets of the former lower-tier member the bases of which were reduced, the higher-tier member would be required to include as ordinary income the recapture amount with respect to such assets. In that case, the group may be required to include in consolidated taxable income the amounts representing the same excluded COD income more than once.

The IRS and Treasury Department believe that it is appropriate for the group to include in income as ordinary income amounts reflecting previously excluded COD income only once. Therefore, to prevent a double inclusion of ordinary income amounts representing the same excluded COD income, these regulations provide that a reduction of the basis of subsidiary stock is treated as a deduction allowed for depreciation only to the extent that the amount by which the basis of the subsidiary stock is reduced exceeds the total amount of the attributes attributable to such subsidiary that are reduced pursuant to the subsidiary's consent under section 1017(b)(3)(D) or as a result of the application of the look-through rule. This rule has the effect of limiting the ordinary income recapture amount to the amount of the stock basis reduction that does not result in a corresponding reduction of the tax attributes attributable to the subsidiary.

B. Application of Matching Rule

If the member that realizes excluded COD income is the creditor with respect to an intercompany obligation, it is possible that the basis of that intercompany obligation would be reduced under sections 108 and 1017, and § 1.1502–28T. Section 1.1502–13 provides rules relating to the treatment of transactions between members of a consolidated group. In general, in the case of a transaction between two members (S and B) of a consolidated group, the regulations operate to match the items of both members. In particular, under § 1.1502–13(c)(1)(i), the separate entity attributes of S's intercompany items and B's corresponding items are redetermined to the extent necessary to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation, and the intercompany transaction were a transaction between divisions. Under paragraph § 1.1502–13(c)(6)(i), subject to certain limitations, S's intercompany item might be redetermined to be excluded from gross income or treated as a noncapital, nondeductible amount.

Some commentators have asked whether the rule of § 1.1502–13(c)(6)(i) operates to exclude from gross income any income recognized that is attributable to the application of excluded COD income to reduce the basis of an intercompany obligation. The application of the rule of § 1.1502–13(c)(6)(i) in this manner would render without consequence the reduction of the basis of the intercompany obligation. These temporary regulations, therefore, reflect the IRS's and Treasury Department's position that, if the basis of an intercompany obligation held by a creditor member is reduced in respect of excluded COD income, § 1.1502–13(c)(6)(i) will not apply to exclude income of the creditor member attributable to the basis reduction in the intercompany obligation.

C. Taking Into Account of Excess Loss Account

Under §§ 1.1502–19 and 1.1502–19T, when an indebtedness of a subsidiary is discharged and any part of the amount discharged is not included in gross income and is not treated as tax-exempt income under § 1.1502–32, if there is an excess loss account in the stock of the subsidiary, that excess loss account must be included in income to the extent of the amount discharged that is not treated as tax-exempt income. Questions have arisen regarding the timing of the taking into account of excess loss accounts required pursuant to §§ 1.1502–19 and 1.1502–19T.

The IRS and Treasury Department have considered whether an excess loss account that is required to be included as a result of the application of § 1.1502–19(c)(1)(iii)(B) is properly included in the group's consolidated taxable income for the taxable year that includes the date on which the member realizes the excluded COD income. Some have suggested that, because pursuant to section 108(b)(4)(A) attributes are reduced only after the computation of tax for the year of the excluded COD income and, therefore, whether an excess loss account must be included in income is determined only after the computation of tax, the inclusion of the excess loss account should not be required on the return for the taxable year that includes the date on which the excluded COD income was realized. Because the inclusion of the excess loss account is required in connection with the realization of the excluded COD income, the IRS and

Treasury Department believe that it is properly included on the return for the taxable year that includes the date on which the excluded COD income was realized.

Some have suggested that inclusion of the excess loss account on the return for the taxable year that includes the date on which the excluded COD income was realized could result in circular calculations. That is, the inclusion of the excess loss account would be offset by losses that would have otherwise been subject to reduction, potentially increasing the amount of excluded COD income that is not applied to reduce attributes and, therefore, the amount of excess loss account required to be taken into account. To address this concern, contemporaneously with the issuance of these temporary regulations, the IRS and Treasury Department are proposing regulations that address these and other circular computations that would otherwise arise when there is an actual disposition of subsidiary stock, or an event that is treated as a disposition of subsidiary stock under § 1.1502–19, in the year that a member of the group realizes excluded COD income. Those regulations are published elsewhere in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income and the consequences of such application. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed applicability date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.1502–13T also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Paragraph (g)(3)(ii)(B) of § 1.1502–13 is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(g) * * *

(3) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1502–13T(g)(3)(ii)(B).

* * * * *

■ **Par. 3.** Section 1.1502–13T is added to read as follows:

§ 1.1502–13T Intercompany transactions (temporary).

(a) through (g)(3)(ii)(A) [Reserved]. For further guidance, *see* § 1.1502–13(a) through (g)(3)(ii)(B).

(g)(3)(ii)(B) *Timing and attributes.* For purposes of applying the matching rule and the acceleration rule —

(*1*) Paragraph (c)(6)(ii) of this section (limitation on treatment of intercompany income or gain as excluded from gross income) does not apply to prevent any intercompany income or gain from being excluded from gross income;

(*2*) Any gain or loss from an intercompany obligation is not subject to section 108(a), section 354 or section 1091;

(*3*) The reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and § 1.1502–28T does not result in the realization of any amount with respect to such obligation; and

(*4*) Paragraph (c)(6)(i) of this section (treatment of intercompany items if corresponding items are excluded or nondeductible) will not apply to exclude any amount of income or gain attributable to a reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and § 1.1502–28T.

(g)(3)(iii) through (k) [Reserved]. For further guidance, *see* § 1.1502–13(g)(3)(iii) through (k).

(l) *Effective dates.* Paragraph (g)(3)(ii)(B) of this section applies to transactions or events occurring during a taxable year the original return for which is due (without extensions) after March 12, 2004.

■ **Par. 4.** Section 1.1502–28T is amended by:

■ 1. Adding paragraphs (b)(4), (b)(5), and (b)(6).

■ 2. Revising paragraph (d).

The additions and revision read as follows:

§ 1.1502–28T Consolidated section 108 (temporary).

* * * * *

(b) * * *

(4) *Application of section 1245.* Notwithstanding section 1017(d)(1)(B), a reduction of the basis of subsidiary stock is treated as a deduction allowed for depreciation only to the extent that the amount by which the basis of the subsidiary stock is reduced exceeds the total amount of the attributes attributable to such subsidiary that are reduced pursuant to the subsidiary's consent under section 1017(b)(3)(D) or as a result of the application of paragraph (a)(3)(ii) of this section.

(5) *Reduction of basis of intercompany obligations. See* § 1.1502–13T(g)(3)(ii)(B)(3) and (4) for special rules related to the application of the matching and acceleration rules of § 1.1502–13 when the basis of an intercompany obligation is reduced pursuant to sections 108 and 1017 and paragraph (a)(2) or (3) of this section.

(6) *Taking into account of excess loss account*—(i) *Determination of inclusion.* [Reserved.]

(ii) *Timing of inclusion.* To the extent an excess loss account in a share of stock of a subsidiary that realizes excluded COD income is required to be taken into account as a result of the application of § 1.1502–19(c)(1)(iii)(B), such amount shall be included on the group's tax return for the taxable year that includes the date on which the subsidiary realizes such excluded COD income.

* * * * *

(d) *Effective dates.* (1) This section, other than paragraphs (a)(4), (b)(4), (b)(5), and (b)(6) of this section, applies to discharges of indebtedness that occur after August 29, 2003.

(2) Paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a

taxable year the original return for which is due (without regard to extensions) after December 11, 2003. However, groups may apply paragraph (a)(4) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 11, 2003. For discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 11, 2003, paragraph (a)(4) of this section shall apply as in effect on August 29, 2003.

(3) Paragraphs (b)(4), (b)(5), and (b)(6)(ii) of this section apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after March 12, 2004. However, groups may apply paragraphs (b)(4), (b)(5), and (b)(6) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before March 12, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 4, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–5666 Filed 3–12–04; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in April 2004. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during April 2004, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during April 2004, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during April 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.00 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for March 2004) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for March 2004.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during April 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 126, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
126	4–1–04	5–1–04	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 126, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
126	4–1–04	5–1–04	3.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
April 2004	.0400	1–20	.0500	20	N/A	N/A

Issued in Washington, DC on this 9th day of March 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–5762 Filed 3–12–04; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–012]

RIN 1625–AA08

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations for the 25th Annual Safety at Sea Seminar, a marine event to be held March 27, 2004, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.518 will be enforced from 11:30 a.m. to 2 p.m. on March 27, 2004.

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

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy Sailing Squadron will sponsor the 25th Annual Safety at Sea Seminar on the waters of the Severn River, near the entrance to College Creek at Annapolis, Maryland. Waterborne activities will include exposure suit and life raft demonstrations, a pyrotechnics live-fire exercise, and a helicopter rescue. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in enforced for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be enforced for a limited period, they should not result in

a significant disruption of maritime traffic.

Dated: March 4, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–5794 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–040]

RIN 1625–AA09

Drawbridge Operation Regulations; Delaware River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Tacony-Palmyra Bridge across the Delaware River mile 107.2, in Burlington County, New Jersey. This deviation allows the drawbridge to remain in the closed-to-navigation position from 9 p.m. on March 29, 2004, to 9 p.m. on April 5, 2004. This closure is necessary to facilitate structural repairs.

DATES: This deviation is effective from 9 p.m. on March 29, 2004, through 9 p.m. on April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: The Tacony-Palmyra Bridge, a double-leaf drawbridge, is owned and operated by the Burlington County Bridge Commission (Burlington County). Cornell & Company, Inc., on behalf of Burlington County, has requested a temporary deviation from the operating regulation to facilitate needed structural repairs to the bridge.

The work involves the machining and repairing of the track girders that support the drawbridge. There are four girders to be repaired and all four will be worked on simultaneously. To facilitate the repairs, the work requires completely immobilizing the draw spans in the closed-to-navigation position from 9 p.m. on March 29, 2004, through 9 p.m. on April 5, 2004. The Coast Guard has informed the known users of the waterway of the closure periods for the bridge caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of repair completion of the drawbridge. This deviation allows the Tacony-Palmyra Bridge, across the Delaware River mile 107.2, in Burlington County, NJ, to remain closed to navigation from 9 p.m. March 29, 2004, to 9 p.m. on April 5, 2004.

Dated: March 5, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Branch, Fifth Coast Guard District.

[FR Doc. 04–5795 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA133–5066a; FRL–7635–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Regulations for General Compliance Activities and Source Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions update certain requirements related to applicability, compliance, testing and monitoring to be consistent with Federal requirements and EPA policy. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on May 14, 2004 without further notice, unless EPA receives adverse written comment by April 14, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2003, the Virginia Department of Environmental Quality (DEQ) submitted formal revisions to the Commonwealth's State Implementation Plan (SIP). On December 16, 2003, the DEQ submitted a minor technical correction to the July 1, 2003 submittal. The SIP revisions consist of amendments to existing regulations that implement general compliance and source surveillance activities such as emission testing, emission monitoring, recordkeeping, reporting activities. In general, these revisions update requirements to be consistent with Federal requirements and allow for electronic submittal of information where appropriate.

II. Summary of the SIP Revisions

These SIP revisions amend definitions and regulations covering special provisions for existing and new and modified air pollutant sources. With the exception of the definition of the term "Initial performance test" these amendments to Virginia's regulations were effective in the Commonwealth on August 1, 2002. The definition of "Initial performance test" as adopted on August 1, 2002 had a minor technical error. The correction to the definition was adopted on November 5, 2003 and became effective January 1, 2004 in the Commonwealth.

(A) 9 VAC 5 Chapter 10. General Definitions: The general provisions in 9 VAC 5–10–10 have been amended to clarify citations and to require that where differences between the general definitions and definitions in major divisions of the regulations occur, the latter will prevail. The following definitions in 9 VAC 5–10–20 have been modified: "Affected facility," "Delayed compliance order," "Excessive concentration," "Federally enforceable," "Malfunction," "Public

hearing," "Reference test method," "Reid vapor pressure," "Stationary source," "True vapor pressure," "Vapor pressure" and "Volatile organic compound." Substantive modifications include changes to the definitions of the terms: "Malfunction" to clarify that failure of air pollution equipment caused by poor maintenance or careless operation will not be considered a malfunction; "Federally enforceable" to clarify that it applies to those limits and conditions enforceable by the Administrator of EPA and citizens under the Clean Air Act; "Reference method" to include reference to Appendix M of 40 CFR part 51; and "Volatile Organic Compound" to exempt those compounds exempted by EPA's Federal definition.

The following terms have been added to the definitions in 9 VAC 5–10–20: "EPA", "Initial emissions test", "Initial performance test" (correction adopted November 5, 2003 and effective January 1, 2004 in the Commonwealth), "Maintenance area" and "Section 111(d) plan". These definitions are consistent with Federal regulations. The term "Air quality maintenance area" has been removed.

(B) 9 VAC 5 Chapters 40, Part I. Special Provisions for Existing Stationary Sources and 9 VAC 5 Chapter 50, Part I. Special Provisions for Existing Stationary Sources: Non-substantive revisions to these chapters include clarifications on applicability, updated regulatory citations, allowances for submitting reports and documents electronically, and syntax improvements. The substantive changes that are common to both Chapter 40 and Chapter 50 include:

9 VAC 5–40–20 and 5–50–20: Subparagraph 20.A of both chapters has been revised to allow the use of alternative or equivalent methods to determine compliance with Federal requirements only when approved by the Administrator of EPA. The affected Federal requirements include but are not limited to new source performance standards, Federal operating permits, implementation plans, section 111(d) plans, Federal construction permits or construction permits issued under regulations approved by EPA, and operating permits issued under programs approved by EPA in the SIP. These changes appropriately limit discretionary changes to be consistent with Federal requirements. Subparagraph 20.G of both chapters has been revised to require opacity observations concurrent with initial performance tests following certain criteria and conditions. Where no performance test is required, a source must conduct opacity observations within 60 days after achieving the maximum production rate. A continuous opacity monitor may be used provided certain protocols are used. These provisions strengthen the opacity requirements in the SIP. Finally, subparagraphs 20.H and 20.I of chapters 40 and 50 respectively, add provisions to allow the use of any credible evidence or information for determining compliance with the requirements in these chapters.

9 VAC 5–40–30 and 5–50–30: Subparagraph 30.A of both chapters has been modified to specify that appropriate reference test methods shall be used for emission testing unless the Board allows, in advance, an equivalent method, an alternative method, a waiver from testing on the Board's belief that the source is in compliance with the standard, or a shorter sampling time and volume as necessary. On their face, these new provisions would grant a level of discretionary authority that EPA would find objectionable. However, 9 VAC 5–40–20 and 5–50–20, subparagraph 20.A.2 provide that alternative or equivalent methods for determining compliance with Federal requirements must be approved by the EPA Administrator. Subparagraph F.1 of both chapters has been modified to set conditions to ensure that sampling ports shall be adequate for applicable test methods. This modification clarifies and supports the SIP with respect to sampling port requirements.

9 VAC 5–40–50 and 5–50–50: Subparagraph A of both chapters has been modified to add a requirement that the Board have no less than 30 days notification for opacity observations. Subparagraph C has been modified to add a requirement for semi-annual reporting for owners that install continuous monitoring systems unless more frequent reporting is required by an emission standard or the Board determines that more frequent reporting is necessary.

These revisions strengthen the SIP by clarifying and updating definitions and source surveillance requirements related to new or modified and existing sources of air pollution. The revisions also require EPA review of alternative emission limits and allow the use of any credible evidence or information for determining compliance.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized

programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the revisions to 9 VAC 5 Chapters 10, 40 and 50 of Virginia's Regulations for the Control and Abatement of Air Pollution, submitted by Virginia on July 1, 2003 and December 16, 2003. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 14, 2004 without further notice unless EPA receives adverse comment by April 14, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number VA133–5066 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 *morris.makeba@epa.gov*, attention VA133–5066. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

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

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

Submittal of CBI Comments

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

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

Considerations When Preparing Comments to EPA

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 2004.

Filing a petition for reconsideration by the Administrator of this final rule approving amendments to the "Special Provisions" chapters of Virginia's Regulations for the Control and Abatement of Air Pollution does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 2, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In Section 52.2420, the table in paragraph (c) is amended:

■ a. Under Chapter 10 by revising the entry for 5–10–10 and by adding an entry for 5–10–20 after the existing entry for 5–10–20.

■ b. Under Chapter 40 by revising entries 5–40–10, 5–40–20, 5–40–30, 5–40–40 and 5–40–50.

■ c. Under Chapter 50 by revising entries 5–50–10, 5–50–20, 5–50–30, 5–50–40 and 5–50–50.

§ 52.2420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation
CHAPTER 10		GENERAL DEFINITIONS [PART I]		
5–10–10	General	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Revised paragraphs A, B, C and added new paragraph D.
*	*	*	*	*
5–10–20	Terms Defined	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Terms Added: EPA, Initial emissions test, Initial performance test (as corrected 11/05/03 and effective 01/01/04 in the Commonwealth), Maintenance area. Terms Revised: Affected facility, Delayed compliance order, Excessive concentration, Federally enforceable, Malfunction, Public hearing, Reference method, Reid vapor pressure, Stationary source, True vapor pressure, Vapor pressure. Terms Removed: Air Quality Maintenance Area.
CHAPTER 40 PART I		EXISTING STATIONARY SOURCES [PART IV] SPECIAL PROVISIONS		
5–40–10	Applicability	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Modified paragraphs A through C, added paragraph D.
5–40–20	Compliance	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Added new paragraph A.2 and revised renumbered paragraph A.3. New paragraph A.4 is not included in the SIP revision. Added new paragraph G, revised paragraphs H, H.1, H.1.b through e, H.2, H.2.b through e, and added new paragraph J.
5–40–30	Emissions Testing	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Revised paragraph A. Revisions to paragraph C not included in SIP revision. Revised paragraph F.1.
5–40–40	Monitoring	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Revised paragraph B, and D.1 and added D.12.
5–40–50	Notification, records and reporting.	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Added new paragraph A.3. Revised paragraph C, C.1, D, E and F.
*	*	*	*	*
CHAPTER 50 PART I		NEW AND MODIFIED STATIONARY SOURCES [PART V] SPECIAL PROVISIONS		
5–50–10	Applicability	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Modified paragraphs B and D, added paragraphs E and F.
5–50–20	Compliance	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Added new paragraph A.2. and revised renumbered paragraphs A.3 through A.5. Added new paragraph G, revised paragraph H, H.2, H.2a, H.3, H.4 and added new paragraph I.
5–50–30	Performance Testing	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Revised paragraph A. Revisions to paragraph C not included in SIP revision. Revised paragraph F.1.
5–50–40	Monitoring	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Revised paragraph E.1 and added E.10.
5–50–50	Notification, records and reporting.	August 1, 2002	March 15, 2004 [*Federal Register page citation*].	Added new paragraph A.6. and Revised paragraph C, C.1, D, E and F.
*	*	*	*	*

[FR Doc. 04–5637 Filed 3–12–04; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–17

[FTR Amendment 2004–01; FTR Case 2004–301]

RIN 3090–AH94

Federal Travel Regulation; Relocation Income Tax Allowance Tax Tables (2004 Update)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 2004 RIT allowance to be paid to relocating Federal employees.

DATES: *Effective Date:* January 1, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Sallie Sherertz, Office of Governmentwide Policy, Travel Management Policy, at (202) 219–3455. Please cite FTR Amendment 2004–01, FTR case 2004–301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5724b of Title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving expense reimbursements. Policies and procedures for the calculation and payment of a RIT allowance are contained in the Federal Travel Regulation (41 CFR part 302–17). The Federal, State, and Puerto Rico tax tables for calculating RIT allowance payments are updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–17

Government employees, Travel and transportation expenses.

Dated: February 27, 2004.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5739, GSA amends 41 CFR part 302–17 as set forth below:

Chapter 302 Relocation Allowances

PART 302–17—RELOCATION INCOME TAX (RIT) ALLOWANCE

■ 1. The authority citation for 41 CFR part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

■ 2. Revise Appendixes A, B, and C to part 302–17 to read as follows:

Appendix A to Part 302–17—Federal Tax Tables for RIT Allowance

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2003

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 2003.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,274	$14,314	$15,005	$25,136	$20,977	$32,559	$10,958	$16,536
15	14,314	37,771	25,136	54,712	32,559	69,722	16,536	34,507
27	37,771	81,890	54,712	122,788	69,722	142,842	34,507	70,442
30	81,890	162,802	122,788	193,703	142,842	206,675	70,442	107,631
35	162,802	334,763	193,703	350,138	206,675	343,919	107,631	181,753
38.6	334,763	.....	350,138	.....	343,919	.....	181,753	.....

Appendix B to Part 302–17—State Tax Tables For RIT Allowance

State Marginal Tax Rates by Earned Income Level—Tax Year 2003

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–17.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 2003.

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN.[1,2]

State (or district)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	[3] $75,000 & over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	3.20	3.74	4.72	5.04
Arkansas	6	7	7	7
California	2	4	8	9.3
If single status [4]	6	8	9.3	9.3
Colorado	4.63	4.63	4.63	4.63
Connecticut	5	5	5	5
Delaware	5.2	5.55	5.95	5.95
District of Columbia	7.5	9.3	9.3	9.3
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	6.4	7.6	8.25	8.25
If single status [4]	7.6	8.25	8.25	8.25
Idaho	7.4	7.8	7.8	7.8
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.48	7.92	8.98	8.98
Kansas	3.5	6.25	6.45	6.45
If single status [4]	6.25	6.45	6.45	6.45
Kentucky	6	6	6	6
Louisiana	4	6	6	6
Maine	7	8.5	8.5	8.5
If single status [4]	8.5	8.5	8.5	8.5
Maryland	4	4	4	4
Massachusetts	5.3	5.3	5.3	5.3
Michigan	4	4	4	4
Minnesota	5.35	7.05	7.05	7.05
If single status [4]	7.05	7.05	7.85	7.85
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	7	9	10	10
Nebraska	3.57	5.12	6.84	6.84
If single status [4]	5.12	6.84	6.84	6.84
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.75	1.75	2.45	3.5
If single status [4]	1.75	3.5	5.525	6.37
New Mexico	4.7	6	7.1	7.7
If single status [4]	6	7.1	7.7	7.7
New York	5.25	5.9	6.85	6.85
If single status [4]	6.85	6.85	6.85	6.85
North Carolina	7	7	7	7
North Dakota	2.1	2.1	3.92	3.92
If single status [4]	2.1	2.1	3.92	4.34
Ohio	4.457	4.457	5.201	5.201
Oklahoma	7	7	7	7
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island [5]	25	25	25	25
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont [6]	3.6	3.6	7.2	8.5
If single status [4]	3.6	7.2	7.2	8.5
Virginia	5.75	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.5	6.5	6.5	6.5
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in §.302–17.8(e)(2)(ii).

[3] This is an estimate. For earnings over $100,000, please consult actual tax tables.

[4] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[5] The income tax rate for Rhode Island is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii).

[6] The income tax rate for Vermont is 24 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii).

Appendix C to Part 302–17—Federal Tax Tables For RIT Allowance-Year 2

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2004

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, or 2003.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,486	$15,852	$15,539	$25,991	$22,763	$36,688	$10,614	$17,891
15	15,852	39,093	25,991	56,668	36,688	82,625	17,891	41,386
25	39,093	84,081	56,668	123,629	82,625	147,439	41,386	74,492
28	84,081	166,123	123,629	193,801	147,439	212,158	74,492	108,134
33	166,123	341,553	193,801	354,536	212,158	352,775	108,134	179,237
35	341,553	.....	354,536	.....	352,775	.....	179,237	.....

■ 3. Amend the heading of Appendix D to part 302–17 by removing "2002" and adding "2003" in its place.

[FR Doc. 04–5715 Filed 3–12–04; 8:45 am]
BILLING CODE 6820–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication.

The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the

NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No.: B–7440).	Town of Gila Bend (02–09–807P), (02–09–857P).	August 7, 2003; August 14, 2003; *Arizona Business Gazette.*	The Honorable Chuck Turner, Mayor, Town of Gila Bend, P.O. Box A, Gila Bend, Arizona 85337.	November 13, 2003 ..	040043
Arizona: Maricopa (FEMA Docket No.: B–7440).	City of Phoenix (03–09–0522P).	August 7, 2003; August 14, 2003; *Arizona Business Gazette.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.	November 13, 2003 ..	040051
Arizona: Maricopa (FEMA Docket No.: B–7440).	City of Scottsdale (03–09–0482P).	July 24, 2003; July 31, 2003; *Arizona Business Gazette.*	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	October 23, 2003	045012
Arizona: Maricopa (FEMA Docket No.: B–7440).	Unincorporated Areas (02–09–807P), (02–09–857P).	August 7, 2003; August 14, 2003; *Arizona Business Gazette.*	The Honorable R. Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	November 13, 2003 ..	040037
Arizona: Maricopa (FEMA Docket No.: B–7440).	Unincorporated Areas (02–09–1240P).	August 7, 2003; August 14, 2003; *Arizona Republic.*	The Honorable R. Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	November 13, 2003 ..	040037
Arizona: Pima (FEMA Docket No.: B–7440).	Unincorporated Areas (01–09–407P).	July 24, 2003; July 31, 2003; *Tucson Citizen.*	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	June 30, 2003	040073
Arizona: Yavapai (FEMA Docket No.: B–7440).	Town of Prescott Valley (03–09–0757P).	July 31, 2003; August 7, 2003; *Prescott Daily Courier.*	The Honorable Richard Killingsworth, Mayor, Town of Prescott Valley, Civic Center, 7501 East Civic Circle, Prescott Valley, Arizona 86314.	November 6, 2003	040121
California: Contra Costa (FEMA Docket No.: B–7440).	City of Concord (03–09–0859P).	September 4, 2003; September 11, 2003; Contra Costa Times.	The Honorable Mark Peterson, Mayor, City of Concord, Concord City Hall, 1950 Parkside Drive, Concord, California 94519.	August 11, 2003	065022
California: Contra Costa (FEMA Docket No.: B–7440).	City of Richmond (03–09–1116P).	September 18, 2003; September 25, 2003; Contra Costa Times.	The Honorable Irma Anderson, Mayor, City of Richmond, 2600 Barrett Avenue, Third Floor, Richmond, California 94804.	August 27, 2003	060035
California: Mendocino (FEMA Docket No.: B–7440).	City of Ukiah (03–09–0317P).	October 2, 2003; October 9, 2003; Ukiah Daily Journal.	The Honorable Eric Larson, Mayor, City of Ukiah, 300 Seminary Avenue, Ukiah, California 95482.	September 11, 2003 ..	060186
California: Mendocino (FEMA Docket No.: B–7440).	Unincorporated Areas (03–09–0317P)..	October 2, 2003; October 9, 2003; Ukiah Daily Journal.	The Honorable Richard Shoemaker, Chairman, Mendocino County Board of Supervisors, 501 Low Gap Road, Room 1090, Ukiah, California 95482.	September 11, 2003 ..	060183
California: Riverside (FEMA Docket No.: B–7440).	City of Temecula (02–09–1365P).	July 31, 2003; August 7, 2003; Press Enterprise.	The Honorable Jeff Stone, Mayor, City of Temecula, P.O. Box 9033, Temecula, California 92589–9033.	November 6,2003	060742

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Sacramento (FEMA Docket No.: B–7440).	Unincorporated Areas (03–09–0432P).	August 7, 2003; August 14, 2003; *Daily Recorder.*	The Honorable Illa Collin, Chair, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	July 21, 2003	060262
California: San Bernardino (FEMA Docket No.: B–7440).	City of Yucaipa (03–09–0821P).	September 18, 2003; September 25, 2003; San Bernardino County Sun.	The Honorable Dick Riddell, Mayor, City of Yucaipa, 34272 Yucaipa Boulevard, Yucaipa, California 92399.	September 2, 2003 ...	060739
California: San Diego (FEMA Docket No.: B–7440).	City of San Diego (03–09–1057P).	August 14, 2003; August 21, 2003; *San Diego Daily Transcript.*	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	November 20, 2003 ..	060295
California: San Diego (FEMA Docket No.: B–7440).	City of San Diego (03–09–0450P).	September 18, 2003; September 25, 2003; *San Diego Union-Tribune.*	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	August 21, 2003	060295
California: Santa Barbara (FEMA Docket No.: B–7440).	City of Santa Barbara (01–09–220P).	October 9, 2003; October 16, 2003; *Santa Barbara News Press.*	The Honorable Marty Blum, Mayor, City of Santa Barbara, P.O. Box 1990, Santa Barbara, California 93102–1990.	January 15, 2004	060335
Colorado: Arapahoe (FEMA Docket No.: B–7440).	Unincorporated Areas (03–08–0362P).	August 14, 2003; August 21, 2003; *Denver Post.*	The Honorable Marie Mackenzie, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	July 24, 2003	080011
Colorado: Denver (FEMA Docket No.: B–7440).	City and County of Denver (03–08–0362P).	August 14, 2003; August 21, 2003; *Denver Post.*	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, Colorado 80202.	July 24, 2003	080046
Colorado: El Paso (FEMA Docket No.: B–7438).	City of Colorado Springs (02–08–394P).	April 24, 2003; May 1, 2003; *The Gazette.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	July 31, 2003	080060
Colorado: El Paso (FEMA Docket No.: B–7440).	City of Colorado Springs (03–08–0212P).	August 14, 2003; August 21, 2003; *The Gazette.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	October 9, 2003	080060
Colorado: El Paso (FEMA Docket No.: B–7440).	City of Colorado Springs (01–08–177P).	October 9, 2003; October 16, 2003; *The Gazette.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	January 15, 2004	080060
Colorado: El Paso (FEMA Docket No.: B–7440).	Unincorporated Areas (03–08–0385P).	August 20, 2003; August 27, 2003; *El Paso County News.*	The Honorable Chuck Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	November 26, 2003 ..	080059
Colorado: El Paso (FEMA Docket No.: B–7440).	Unincorporated Areas (01–08–177P).	October 9, 2003; October 16, 2003; The Gazette.	The Honorable Chuck Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	January 15, 2004	080059
Colorado: Jefferson (FEMA Docket No.: B–7440).	City of Lakewood (03–08–0167P).	June 19, 2003; August 7, 2003; *Lakewood Sentinel.*	The Honorable Steve Burkholder, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, Colorado 80226–3127.	September 25, 2003	085075
Hawaii: Hawaii (FEMA Docket No.: B–7440).	Hawaii County (03–09–0853P).	August 7, 2003; August 14, 2003; *Hawaii Tribune Herald.*	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	July 15, 2003	155166
Idaho: Gem (FEMA Docket No.: B–7440).	Unincorporated Areas (03–10–0299P).	August 31, 2003; September 7, 2003; *Idaho Press Tribune.*	The Honorable Ed Mansfield, Chairman, Gem County Board of Commissioners, 415 East Main Street, Emmett, Idaho 83617.	December 4, 2003	160127

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nevada: Clark (FEMA Docket No.: B–7440).	Unincorporated Areas (03–09–1569P).	October 2, 2003; October 9, 2003; *Las Vegas Review—Journal.*	The Honorable Mary Kincaid-Chauncey, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	September 11, 2003 ..	320003
Texas: Collin (FEMA Docket No.: B–7440).	City of Frisco (01–06–1415P).	August 8, 2003; August 15, 2003; *Frisco Enterprise.*	The Honorable Mike Simpson, Mayor, City of Frisco, 6891 Main Street, Frisco, Texas 75034.	November 14, 2003 ..	480134
Washington: Thurston (FEMA Docket No.: B–7440).	City of Olympia (03–10–0337P).	September 18, 2003; September 25, 2003, *The Olympian.*	The Honorable Stan Biles, Mayor, City of Olympia, P.O. Box 1967, Olympia, Washington 98507–1967.	December 26, 2003 ..	530191
Washington: Thurston (FEMA Docket No.: B–7440).	City of Tumwater (03–10–0337P).	September 18, 2003; September 25, 2003; *The Olympian.*	Hon. Ralph C. Osgood, Mayor, City of Tumwater, 555 Israel Road Southwest, Tumwater, Washington 98501.	December 26, 2003 ..	530192
Washington: Thurston (FEMA Docket No.: B–7440).	Unincorporated Areas (03–10–0337P).	September 18, 2003; September 25, 2003; *The Olympian.*	The Honorable Cathy Wolfe, Chair, Thurston County Board of Commissioners, Building 1, Room 269, 2000 Lakeridge Drive Southwest, Olympia, Washington 98502–6045.	December 26, 2003 ..	530188

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 3, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–5748 Filed 3–12–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7444]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1 % annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director for the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities.

The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director for the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of

the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix (03–09–0934P).	December 18, 2003; December 25, 2003; *Arizona Business Gazette.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.	March 25, 2004	040051
Arizona: Pima	Town of Marana (02–09–829P).	January 15, 2004; January 22, 2004; *Daily Territorial.*	The Honorable Bobby Sutton, Jr., Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653.	March 18, 2004	040118
Arizona: Pima	City of Tucson (02–09–829P).	January 15, 2004; January 22, 2004; *Daily Territorial.*	The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda Street, Tucson, Arizona 85701.	March 18, 2004	040076
Arizona: Pima	Unincorporated Areas (02–09–829P).	January 15, 2004; January 22, 2004; *Daily Territorial.*	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	March 18, 2004	040073
Arizona: Yuma	Unincorporated Areas (02–09–045P).	December 16, 2003; December 23, 2003; *Yuma Daily Sun.*	The Honorable Lenore Lorona Stuart, Chairperson, Yuma County Board of Supervisors, 198 South Main Street, Yuma, Arizona 85364.	March 24, 2004	040099
California: Amador.	City of Sutter Creek (03–09–0678P).	October 8, 2003; October 15, 2003; *Ledger Dispatch.*	The Honorable W. Brent Parsons, Mayor, City of Sutter Creek, P.O. Box 1238, Sutter Creek, California 95685.	September 19, 2003	060458
California: Contra Costa.	Unincorporated Areas (03–09–1147P).	November 6, 2003; November 13, 2003; *Contra Costa Times.*	The Honorable Mark DeSaulnier, Chairman, Contra Costa County Board of Supervisors, 2425 Bisso Lane Suite 110, Concord, California 94520.	October 29, 2003	060025
California: Mono	Unincorporated Areas (02–09–0445P).	January 22, 2004; January 29, 2004; *Mammoth Times.*	The Honorable Mary Pipersky, Chairperson, Mono County Board of Supervisors, P.O. Box 8474, Mammoth Lakes, California 93546.	April 28, 2004	060194
California: Riverside.	City of Murrieta (03–09–1620P).	January 22, 2004; January 29, 2004; *The Californian.*	The Honorable Jack Van Haaster, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	April 15, 2004	060751
California: Riverside.	City of Temecula (03–09–0162P).	October 29, 2003; November 5, 2003; *The Press Enterprise.*	The Honorable Jeff Stone, Mayor, City of Temecula, P.O. Box 9033, Temecula, California 92589–9033.	February 4, 2004	060742
California: San Diego.	City of Oceanside (02–09–1057P).	January 8, 2004; January 15, 2004; *North County Times.*	The Honorable Terry Johnson, Mayor, City of Oceanside, 300 North Coast Highway Oceanside, California 92054.	November 21, 2003 ..	060294
California: San Diego.	Unincorporated Areas (03–09–0999P).	November 13, 2003; November 20, 2003; *The San Diego Union Tribune.*	The Honorable Greg Cox, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	February 19, 2003	060284

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Ventura.	City of Simi Valley (03–09–1657P).	December 11, 2003; December 18, 2003; *Ventura County Star.*	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road Simi Valley, California 93063–2199.	November 18, 2003 ..	060421
California: Ventura.	City of Simi Valley (03–09–1631P).	January 1, 2004; January 8, 2004; *Ventura County Star.*	The Honorable William Davis, Mayor City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199.	April 9, 2004	060421
Colorado: Boulder	City of Boulder (03–08–0410P).	January 8, 2004; January 15, 2004; *Boulder Daily Camera.*	The Honorable William R. Toor, Mayor, City of Boulder, 1777 Broadway, Boulder, Colorado 80306.	April 15, 2004	080024
Colorado: El Paso	Town of Monument (03–08–0661P).	January 7, 2004; January 14, 2004; *Tri-Lakes Tribune.*	The Honorable E. L. Konarski, Mayor, Town of Monument, P.O. Box 325, Monument, Colorado 80132.	April 13, 2004	080064
Colorado: El Paso	Unincorporated Areas (03–08–0619P).	December 17, 2003; December 24, 2003; *El Paso County News.*	The Honorable Chuck Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	March 24, 2004	080059
Colorado: Gilpin ..	City of Black Hawk (02–08–526P).	October 10, 2003; October 17, 2003; *Weekly Register Call.*	The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422.	September 15, 2003 ..	080076
Colorado: Jefferson.	City of Lakewood (03–08–0596P).	December 4, 2003; December 11, 2003; *The Lakewood Sentinel.*	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, Colorado 80226.	March 11, 2004	085075
Colorado: Jefferson.	City of Westminster (03–08–0023P).	January 8, 2004; January 15, 2004; *Westminster Window.*	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	April 14, 2004	080008
Colorado: Larimer	City of Fort Collins (03–08–0612P).	December 11, 2003; December 18, 2003; *Fort Collins Coloradoan.*	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80525.	December 17, 2003 ..	080102
Colorado: Routt ..	City of Steamboat Springs (03–08–0036P).	January 4, 2004; January 11, 2004; *Steamboat Pilot.*	The Honorable Kathy Connell, City Council President, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, Colorado 80477.	April 12, 2004	080159
North Carolina: Guilford.	City of Greensboro (03–04–063P).	December 17, 2003; December 24, 2003; News & Record.	The Honorable Keith Holliday, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, North Carolina 27402.	March 24, 2004	375351
Nevada: Clark	City of Henderson (03–09–0270P).	December 4, 2003; December 11, 2003; *Las Vegas Review Journal.*	The Honorable James B. Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015.	November 6, 2003	320005
Texas: Dallas	City of Sachse (03–06–2321P).	January 15, 2004; January 22, 2004; *Dallas Morning News.*	The Honorable Hugh Cairns, Mayor, City of Sachse, 7310 Vista Valley Lane, Sachse, Texas 75048.	April 14, 2004	480186
Utah: Iron	City of Cedar City (03–08–0370P).	November 13, 2003; November 20, 2003; *The Spectrum.*	The Honorable Gerald R. Sherratt, Mayor, City of Cedar City, P.O. Box 249, Cedar City, Utah 84720.	February 19, 2004	490074
Washington: King	City of Bothell (03–10–0047P).	October 16, 2003; October 23, 2003; *Seattle Times.*	The Honorable Jeff Merrill, Mayor, City of Bothell, 18305 101st Avenue Northeast, Bothell, Washington 98011.	January 22, 2004	530075
Washington: King	City of Issaquah (03–10–0308P).	October 15, 2003; October 22, 2003; *Issaquah Press.*	The Honorable Ava Frisinger, Mayor, City of Issaquah, P.O. Box 1307, Issaquah, Washington 98027–1307.	January 22, 2004	530079
Washington: Spokane.	City of Spokane (02–10–545P).	January 8, 2004; January 15, 2004; *Spokesman Review.*	The Honorable John Powers, Mayor, City of Spokane, Spokane City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201–3355.	April 14, 2004	530183

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wyoming: Teton	Teton County (03–08–0507P).	December 3, 2003; December 10, 2003; *Jackson Hole News.*	The Honorable Bill Paddleford, Chair, Teton County Board of Commissioners, P.O. Box 3594, Jackson, Wyoming 83001.	November 19, 2003 ..	560094

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 3, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–5747 Filed 3–12–04; 8:45 am]

BILLING CODE 9110–11–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 04–15]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsiders, on its own motion, requirements in the Commission's rules that the Universal Service Administrative Company (USAC) submit to the Commission an annual report on the rural health care program on the first business day in May of each year. The Commission recently made a number of changes to the rural health care program to improve the program's effectiveness. In the *Rural Health Care Order,* 68 FR 74492, December 24, 2003, the Commission expanded the entities eligible to participate in the program, added Internet access to the list of services eligible for discounts, and modified the way in which telecommunications service discounts are calculated. The Commission does not believe it necessary for USAC to submit two separate annual reports to the Commission on the rural health care program.

DATES: Effective April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Law-Hsu, Deputy Chief, (202) 418–7400, Wireline Competition Bureau, Telecommunications Access Policy Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration,* in WC Docket No. 02–60, FCC 04–15, released January 16, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Order on Reconsideration,* the Commission reconsiders, on its own motion, the requirement in § 54.619(d) of the Commission's rules that the Universal Service Administrative Company (USAC) submit to the Commission an annual report on the rural health care program on the first business day in May of each year. In the *Rural Health Care Order,* the Commission recently made a number of changes to the rural health care program to improve the program's effectiveness. The Commission expanded the entities eligible to participate in the program, added Internet access to the list of services eligible for discounts, and modified the way in which telecommunications service discounts are calculated. Although the Commission made other changes to § 54.619 in this recent order, it made no changes to § 54.619(d). Section 54.702(g) already requires USAC to submit an annual report detailing its activities and information for each of the support mechanisms, including the rural health care program, to the Commission by March 31, of each year.

2. The Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 605(b), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Commission hereby so certifies, because our action relieves affected entities, including small entities, of an unnecessary reporting requirement and therefore results in a positive economic impact. The Commission also expects that that impact will not significant.

II. Ordering Clauses

3. Pursuant to the authority contained in sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this *Order on Reconsideration* is adopted.

4. Part 54 of the Commission's rules, 47 CFR 54.619(d), is amended, as set forth effective April 14, 2004.

List of Subjects in 47 CFR Part 54

Communications common carrier, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.619 [Amended]

■ 2. Amend § 54.619 by removing paragraph (d).

[FR Doc. 04–5816 Filed 3–12–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 50
Monday, March 15, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Regulations for the Safe Transport of Radioactive Material; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Transportation (DOT) are convening a workshop with an opportunity to discuss any operational concerns for implementing the recently revised transportation regulations in 10 CFR part 71 and 49 CFR parts 171 through 178. Part of this workshop will include discussions to obtain a path forward on the portion of the proposed rule concerning 10 CFR part 71 change authority for dual-purpose certificate holders that was not included in the final rule.

DATES: The workshop will be held on April 15, 2004, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The workshop will be conducted at the NRC Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David Pstrak, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–8486; email: *dwp1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2004, the Nuclear Regulatory Commission (NRC) published a final rule (69 FR 3632) that amended the domestic transportation regulations to make them compatible with the 1996 Edition of the International Atomic Energy Agency standards, and to codify other requirements. NRC coordinated this rulemaking and final rule publication with the Department of Transportation (DOT) to ensure that consistent regulatory standards were maintained between NRC and DOT radioactive material transportation regulations, and to ensure joint publication of the final rules. The DOT also published its final rule on January 26, 2004 (69 FR 3632). Both rules become effective on October 1, 2004. During previous rulemakings, both agencies recognized that implementing new requirements often led to questions on specifically what was expected or how a new regulation was to be exercised. To foster an open dialogue with a view towards understanding where uncertainties exist regarding the new requirements, NRC and DOT are seeking views during this open forum.

On April 30, 2002, the NRC published a proposed rule for a major revision of 10 CFR part 71, Packaging and Transportation of Radioactive Material (67 FR 21390). Among other items, the proposed rule included a set of provisions that would allow certificate holders for dual-purpose (storage and transport) spent fuel casks, designated as Type B(DP) packages, to make certain changes to the transportation package without prior NRC approval. When the final rule was issued on January 26, 2004 (69 FR 3698), the change authority provisions were not adopted. The NRC staff determined that implementation of this change could result in new regulatory burdens and significant costs, and that certain changes were already authorized under current part 71 regulations. The NRC concluded that additional stakeholder input was needed on the values and impacts of this change before deciding whether to adopt a final rule providing change authority. The following background paper will be used to guide the discussion during the April 15, 2004, workshop.

Discussion Paper 10 CFR Part 71 Change Authority

Purpose

The purpose of this Discussion Paper is to identify additional input stakeholders may wish to provide with respect to the values and impacts of the proposed rule regarding 10 CFR part 71 change authority for dual-purpose package certificate holders.

Plan for Resolution

This Discussion Paper is being issued as the first step in addressing concerns identified with the implementation of the change authority as proposed in 10 CFR part 71. This Discussion Paper identifies specific information that the staff feels will be useful in adequately evaluating the values and costs of implementing the change authority contained in the proposed rule. The staff plans to hold open, public discussions with stakeholders, to collect and evaluate the information, and to then propose a resolution to the Commission. The resolution will consist of issuing a final rule or withdrawing the change authority proposal.

Provisions of the Proposed Rule

The proposed 10 CFR part 71 established a new subpart I for Type B(DP) packages, and other related and conforming provisions. Subpart I specified requirements for applying for a Type B(DP) package approval, the contents of the application, and the package description and evaluation. The proposed § 71.153 would require the application for a Type B(DP) package to include two parts. The first part, specified in § 71.153(a), is a package application which is the same as the application requirements currently in effect for a Type B(U) package, including essentially the same package evaluation and performance standards. The second part is a new safety analysis report that among other things includes "an analysis of potential accidents, package response to these potential accidents, and any consequences to the public." It is this second part, the "safety analysis report" as described in § 71.153(b), and the associated potential accidents and consequences, that would introduce additional, new requirements for the Type B(DP) packages.

The safety analysis report is the document that would be used to evaluate changes that could be made to the package design or operation without prior NRC approval. The safety analysis report would include the identification and evaluation of potential accidents, which are not necessarily limited to the hypothetical accident conditions that are currently used in part 71. It was envisioned that the safety analysis report would develop an inclusive and rigorous identification and evaluation of potential accidents. Accidents to be

considered could address both external natural events and man-induced events. Man-induced events could include transportation accidents and other accident types. It was also envisioned that accident probabilities would be established, which is a departure from the existing part 71 hypothetical accident conditions. In this regard, the safety analysis report and its accident analysis are similar to the use of those terms in 10 CFR part 72, the regulations that pertain to spent fuel storage casks.

The consequence evaluation could also include other aspects not embodied in the current part 71 regulatory framework. For example, release limits for accident conditions are specified in the current regulations, and not dose limits. For the new safety analysis report, the identification of maximum exposed individuals and populations may need to be addressed in the context of the transportation of the casks. Environmental consequences, including pathway analyses, could also be required. Transport routes and population distributions may be needed for the evaluation, unlike current part 71 standards that are fundamentally route and mode independent.

Type B(DP) package certificate holders would be authorized to make certain changes to the package design and operations based on the provisions in § 71.175(c) of the proposed rule. The change authority would be tied to the safety analysis report required by § 71.153(b). Table 1 compares the proposed provisions with the current rule with respect to evaluations and information that may be required in a package application. The table also identifies the type of information that may be needed in order to evaluate changes made under the provisions of § 71.175(c).

TABLE 1.—COMPARISON OF INFORMATION AND EVALUATIONS REQUIRED BETWEEN TYPE B(DP) AND TYPE B(U) PACKAGES

Provisions of the proposed rule for type B(DP) package under subpart I	Applicable sections under proposed subpart I	Type B(DP) package	Type B(U) package
Application for Package Approval	71.153(a)	yes	yes.
Meets Package Approval Standards Under Subparts E	71.153(a)(2), 71.157	yes	yes.
Meets Performance Standards Under Subparts F	71.153(a)(2), 71.157	yes	yes.
Meets Quality Assurance Standards Under Subparts H	71.153(a)(3), 71.159	yes	yes.
Demonstrate Safe Use of Package	71.153(b)(2)	yes	no.
Evaluate Potential Accidents, Package Response, and Consequences to Public.	71.153(b)(3)	yes	no.
Justification for At Least 20 Years Usage	71.153(b)(4)	yes	no.
Licensing Period for CoC	71.163	up to 20 years	typically 5 years.
FSAR	71.177(a)(1) & (2)	yes	no.
Periodic Updates of FSAR	71.177	yes	n/a.
Maintain Record of Changes	71.175(d)	yes	n/a.
Submit Reports of Changes & Summary of Evaluation	71.175(d)(2)	yes	n/a.
OK for International Transportation		no (not recognized under IAEA regulations).	yes.
NRC Approval Needed for Changes in the Terms, Conditions, or Specifications in CoC.	71.167, 71.175(c)(1)(i)	yes	yes.
Identify Potential Accidents that Will be Evaluated	71.153(b)(3), 71.175(c)(2)	yes	no.
Provide Frequency of Occurrence of an Accident	71.175(c)(2)(i)	yes	no.
Evaluate Consequence of an Accident	71.175(c)(2)(iii)	yes	no.
Evaluate Whether Changes Will Create Possibility of an Accident of Different Type.	71.175(c)(2)(v)	yes	no.
Establish SSC Important to Safety	71.175(a)(3)(i) & (ii)	yes	no.
Provide Probability of SSC Malfunction	71.175(c)(2)(ii)	yes	no.
Evaluate Consequence of SSC Malfunction	71.175(c)(2)(iv)	yes	no.
Evaluate Whether Changes Will Create Different Result of SSC Malfunction.	71.175(c)(2)(vi)	yes	no.
Define Design Basis Limit for a Fission Product Barrier	71.175(c)(2)(vii)	yes	no.
Evaluate Whether Changes Will Exceed Design Basis Limit for a Fission Product Barrier.	71.175(c)(2)(vii)	yes	no.
Identify Method of Evaluation Used in Establishing the Design Basis	71.175(a)(2)	yes	no.
Determine Whether Change is a Departure From the Methods of Evaluation Described in FSAR.	71.175(c)(2)(viii)	yes	no.

Concerns With Implementation Identified by NRC Staff

Section 71.153(b) of the proposed rule states that an application must include a safety analysis report describing an analysis of potential accidents, package response to these potential accidents, and any consequences to the public. This provision departs from the standard part 71 package application (as described in § 71.153(a)) in that an applicant must now assess potential accidents and their consequences to the public from these accidents. Similar to part 72 accident analysis, the accidents to be evaluated could include natural and man-made phenomena, but in the context of truck, rail, or vessel transport activities. The types of information needed for the accident analysis may include population densities by route; highway, vessel, and railway accident rates; and cask and vehicle performance in collisions and fires. This information may not be readily available, and could require significant expenditures for both applicants to produce this information and for NRC to develop guidance documents and review the information. Consequences to the public may include radiological and non-radiological consequences, and may include environmental assessments of potential releases of radioactivity. In addition, the information may require identification

of specific routes and modes of transport, unlike current package approvals. It is noted that this information would be required in addition to the package application described in § 71.153(a).

Changes Currently Authorized Under Part 71

Coupled with these concerns, staff recognized that the regulatory structure of part 71 already allows certain changes to the package without prior NRC approval. For transportation packages, the NRC approves the package design, and the Certificate of Compliance is the approval document that specifies the design (including packaging and radioactive contents) and package operations that are necessary for safe transport. Typically the Certificate of Compliance includes these essential elements: Specification of the design by reference to the design drawings, specification of the authorized contents, and reference to documents that relate to the use and maintenance of the packaging and to the actions to be taken before shipment. These drawings and documents identify the design and operational features that are important for the safe performance of the package under normal and accident conditions. Features that do not contribute to the ability of the package to meet the performance standards in part 71 are not necessarily included as conditions in the Certificate of Compliance. In general, changes to the design or operations that are not conditions of the Certificate of Compliance must be evaluated to assure that they do not affect safety but do not require prior NRC approval.

The staff believes that many changes made to a dual purpose cask under the provisions of 10 CFR 72.48, may also be made without prior NRC approval in the current regulatory structure of part 71, without explicit change authority. Changes to the conditions in the part 71 Certificate of Compliance would require prior NRC approval, even for Type B(DP) packages. Therefore staff concluded that, considering the development of the new information in a safety analysis report as described in the proposed § 71.153(b), and with the existing ability to make certain changes to the package design and operation without prior NRC approval, the benefits of implementation of the new rule may not outweigh the costs.

Input Invited From Stakeholders

To assist staff in estimating the values and impacts of implementation of the proposed rule, staff is inviting stakeholders to provide certain information. Specifically, staff is seeking estimates of the costs associated with development of a safety analysis report evaluating potential accidents, package response, and consequences to the public. Estimates are also needed with respect to the savings that could result from exercising the change authority, for example, the numbers and types of amendments that would not need to be prepared and reviewed. A set of questions has been developed to guide stakeholders in providing this information. The questions are listed in the attachment to this paper. In addition, stakeholders may provide any other relevant information that they believe could be useful in providing staff with a factual basis for evaluating the values and impacts of the proposed rule.

NRC staff is planning a workshop to be held on April 15, 2004, to discuss the impact of the revised 10 CFR part 71. As part of the workshop, the staff plans to hold a session devoted to the proposed change authority rule. The staff plans to make a presentation that explains the proposed rule and changes authorized under the current part 71 regulations. Stakeholders are invited to participate by providing the requested information in written form to be collected at the workshop and in open workshop discussions.

Part 71 Change Authority Questions

To facilitate dialogue at the April 15, 2004, meeting, NRC staff prepared the following questions. In addition, stakeholders are welcome to provide written information to the contact above. Written information is requested by April 30, 2004. Anything received after that date will be considered only if practicable. NRC will consider stakeholder comments in identifying a regulatory solution. NRC staff is requesting fact-based input regarding the costs and benefits associated with the proposed change authority. It is requested that the information provided be as specific as practical, with identification of actual experiences, if applicable.

Implementation of Proposed Change Authority Rule

How would Certificate Holders address the new requirements?

How would potential accident scenarios be developed?

How would accident frequencies be determined?

How would consequences be evaluated (address potential releases, populations exposed, environmental pathways)?

How would modes of transport and transportation routes be identified and considered in the accident and consequence analysis?

How would package suitability for a period of twenty years be demonstrated?

How would structures, systems and components (SSCs) be determined and identified in the final safety analysis report (FSAR)?

How would the probability of SSC malfunctions be determined?

How will the design basis limit for a fission product barrier be defined?

How will the methods of evaluation used in the FSAR be determined and identified?

How will the changes made under the proposed rules be tracked, documented, and controlled?

Costs of the Proposed Change Authority Rule

What are the costs of developing an application containing the requirements of 71.153?

What guidance documents would be needed from NRC?

What level of NRC staff review of the Type B(DP) package application would be anticipated?

What are the costs in preparing FSAR updates, including the basis for changes made under 71.175?

Benefits of the Proposed Rule

How many certificate amendments would be saved using the change authority (quantify in terms of numbers and complexity)?

What operational or time savings would result from change authority?

What other benefits are anticipated (quantify if possible), such as cost of NRC review, minimizing regulatory uncertainty, schedule delay?

Changes Made Under Change Authority in 10 CFR 72.48 That Relate to Part 71

What is the stakeholder experience with actual changes made under 72.48 (numbers, types, complexity)?

How many of the changes made under 72.48 would require a corresponding change to the part 71 Certificate of Compliance (numbers, types, and complexity)?

What changes (types and number) that were made under 72.48 would still require a part 71 Certificate amendment considering the ability to use the proposed part 71 change authority?

Changes Desired Under Subpart I

Identify types of changes that are considered beneficial that would fall under the change authority.

Dated at Rockville, Maryland, this 9th day of March 2004.

For the Nuclear Regulatory Commission.

David W. Pstrak,

Transportation and Storage Project Manager, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–5736 Filed 3–12–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–167265–03]

RIN 1545–BC95

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group; Computation of Taxable Income When Section 108 Applies to a Member of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document contains proposed regulations under section 1502 that govern the timing of certain basis adjustments in respect of the realization of discharge of indebtedness income that is excluded from gross income and the reduction of attributes in respect of that excluded income. In addition, the text of the temporary regulations published elsewhere in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of these proposed regulations with respect to the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. The proposed regulations affect corporations filing consolidated returns.

DATES: Written or electronic comments must be received by June 14, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–167265–03), room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–167265–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Candace B. Ewell or Marie C. Milnes-Vasquez at (202) 622–7530; concerning submission of comments, Treena Garrett at (202) 622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–132760–03, 68 FR 52542) and temporary regulations (TD 9089, 68 FR 52487) under section 1502 of the Internal Revenue Code. The temporary regulations added § 1.1502–28T, which provides guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income (excluded COD income) and the method for reducing those attributes.

The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations address certain issues related to the application of section 1245 and the matching rule of § 1.1502–13, and the inclusion of excess loss accounts in cases in which excluded COD is not fully applied to reduce attributes. The text of those regulations also serves as the text of these proposed regulations with respect to those issues. The preamble to the temporary regulations explains those amendments.

These regulations also propose amendments to §§ 1.1502–28T and 1.1502–11 to address certain issues that have been raised regarding the computation of gain or loss on the disposition of member stock and regarding the computation of the portion of an excess loss account that must be taken into account when excluded COD income is not fully applied to reduce attributes. In particular, if the stock of the subsidiary that realizes excluded COD income is sold, the reduction of other members' attributes will cause an increase in the basis of the stock of the subsidiary, thus reducing the gain (or increasing the loss) on the stock sale that might otherwise have been offset by attributes and possibly making more attributes available for reduction. If the stock of a subsidiary other than one that realizes excluded COD income is sold, the reduction of such subsidiary's attributes in respect of the excluded COD income will cause a decrease in the basis of the sold subsidiary stock, thus increasing the gain (or reducing the loss) on the stock sale, possibly resulting in the absorption of more attributes and making fewer attributes available for reduction.

In addition, the amount of the excess loss account in the stock of a subsidiary that is required to be taken into account can only be determined after the computation of tax for the year of the discharge and the reduction of attributes. Pursuant to § 1.1502–28T(b)(6)(ii), however, that excess loss account must be included on the group's tax return for the taxable year that includes the date on which the subsidiary realizes the excluded COD income. If that excess loss account were offset by losses that could be reduced in respect of the excluded COD income, the inclusion of that amount could result in fewer attributes available for reduction. The availability of fewer attributes for reduction might increase the excluded COD income that was not applied to reduce attributes and, therefore, the amount of the excess loss account in the subsidiary's stock required to be taken into account.

These regulations provide guidance regarding the timing of stock basis adjustments, the calculation of stock gain or loss (including the amount of an excess loss account required to be taken into account), and the reduction of attributes when a member (P) disposes of stock of a subsidiary (S) during a year in which a member realizes excluded COD income. In particular, these regulations propose the steps used to compute the group's consolidated taxable income and to effect the reduction of attributes. In order to avoid circular calculations, these proposed regulations adopt an approach that limits the reduction of attributes in certain cases in which a disposition of subsidiary stock occurs during a year in which one or more members realize excluded COD income.

This methodology applies not only when there is an actual disposition of subsidiary stock, but also when there is a deemed disposition, including a disposition that results by reason of the application of § 1.1502–19(c)(1)(iii)(B) when excluded COD income is not fully applied to reduce attributes. However, in order to know whether there has been a disposition of stock by reason of the application of § 1.1502–19(c)(1)(iii)(B), the group must have computed its consolidated taxable income (or loss) and applied the rules of sections 108 and 1017 and § 1.1502–28T. Therefore, as discussed below, a number of the steps proposed will have a slightly different application when there is such

a deemed disposition of subsidiary stock rather than an actual disposition of subsidiary stock. The following paragraphs outline the proposed steps.

First, the extent to which S's deductions and losses for the tax year of the disposition (and its deductions and losses carried over from prior years) may offset income and gain is computed pursuant to the current rules of § 1.1502–11(b)(2) and (3). Those rules require a tentative computation of the group's taxable income, without regard to the stock gain or loss. In the case of a disposition of subsidiary stock that results from the application of § 1.1502–19(c)(1)(iii)(B) (which will only be apparent after the application of the sixth step described below), the application of § 1.1502–11(b)(2) and (3) will not result in the imposition of a limitation on the use of S's deductions and losses.

Second, §§ 1.1502–32 and 1.1502–32T are tentatively applied to adjust the basis of the S stock to reflect the amount of S's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) that is made pursuant to § 1.1502–11(b)(2). The basis of the S stock is not adjusted to reflect the realization of excluded COD income and the reduction of attributes in respect thereof.

Third, in the case of a disposition of S stock that does not result from excluded COD income not being fully applied to reduce attributes, P's income, gain, or loss from the disposition of S stock is computed using the basis of such stock computed in the preceding step.

Fourth, taxable income (or loss) for the year of disposition (and any prior years to which the deductions or losses may be carried) is tentatively computed. For this purpose, in the case of a disposition of S stock that does not result from excluded COD income not being fully applied to reduce attributes, the tentative computations of taxable income (or loss) take into account P's income, gain, or loss from the disposition of S stock computed in the preceding step. Any excess loss account that is taken into account as a result of excluded COD income not being fully applied to reduce attributes is not included in this tentative computation of taxable income (or loss).

Fifth, the excluded COD income is tentatively applied to reduce attributes pursuant to the rules of sections 108 and 1017 and § 1.1502–28T. Only those attributes that remain after the tentative computations of taxable income (or loss) in the fourth step are subject to reduction.

Sixth, §§ 1.1502–32 and 1.1502–32T are applied to adjust the basis of the S stock to reflect the amount of S's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) made pursuant to the fourth step, and the excluded COD income that is applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the fifth step.

Seventh, the group's actual gain or loss on the disposition of S stock is computed using the basis of such stock computed in the preceding step. At this point, whether and to what extent an excess loss account in the stock of a subsidiary that realizes excluded COD income must be taken into account is computed. In many cases, taking into account the basis consequences of the excluded COD income prior to computing the amount of an excess loss account required to be taken into account may be favorable to taxpayers because those consequences might decrease or even eliminate an excess loss account and, therefore, reduce the amount of excess loss account required to be taken into account. The IRS and Treasury Department are aware that taking into account the basis effects of the excluded COD income of all members of the group may increase the excess loss account in the subsidiary stock. This result may occur in a case in which the excluded COD income of one subsidiary (the first subsidiary) is not fully applied to reduce attributes and the excluded COD income of another subsidiary (the second subsidiary) is applied to reduce attributes in the first subsidiary's chain. The IRS and Treasury Department nevertheless believe that this result is not inappropriate as the reduction of an attribute in the first subsidiary's chain in respect of excluded COD income of the second subsidiary may avoid taking into account an excess loss account in the second subsidiary's stock.

Eighth, the taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) is computed. These amounts are calculated by applying the limitation on the use of S's deductions and losses to offset income computed pursuant to the first step, and by including the gain or loss recognized on the disposition of S stock computed pursuant to the preceding step. However, attributes that were tentatively used to offset income in the tentative computation of taxable income (or loss) in the fourth step and attributes that were tentatively reduced in the fifth step cannot offset any excess loss account taken into account as a result of excluded COD income not being fully applied to reduce attributes. This limitation gives effect to the requirement that the excess loss account be taken into account and avoids circular calculations. If an excess loss account that is taken into account as a result of excluded income could be offset by attributes that could be reduced in respect of the excluded COD income, the use of attributes to offset the excess loss account could result in fewer attributes available for reduction and a greater amount of excluded COD income that was not applied to reduce attributes, which, in turn, would increase the amount of the excess loss account required to be taken into account. Ultimately, the inclusion of the excess loss account and the realization of excluded COD income could have no effect on the overall tax liability of the group, thereby rendering meaningless the requirement to take into account the excess loss account.

Ninth, the excluded COD income is actually applied to reduce attributes pursuant to the rules of sections 108 and 1017 and § 1.1502–28T. Only those attributes remaining after the actual computations of taxable income (or loss) pursuant to the eighth step are subject to reduction in the ninth step. In certain cases, however, the reduction of attributes will be limited to prevent circular calculations. The proposed regulations include two rules in this regard.

The first rule provides that when S or a subsidiary of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes attributable to members other than S and any lower-tier corporation of S cannot exceed the aggregate amount of excluded COD income that is applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to the fifth step (tentative reduction of attributes). Without this limitation, the amount of excluded COD income applied to reduce attributes could exceed the amount of excluded COD income applied to reduce attributes in the fifth step, which would result in a greater positive adjustment (or a lesser negative adjustment) to the basis of the S stock compared to that made in the sixth step, and reduce the gain (or increase the loss) recognized on the disposition of the S stock, which might increase the attributes available for reduction and the amount of

excluded COD income applied to reduce attributes.

The second rule provides that when a member other than S or a subsidiary of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S cannot exceed the aggregate amount of excluded COD income that is applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S in the fifth step. Without this limitation, the amount of excluded COD income applied to reduce the attributes (other than credits) attributable to S or a subsidiary of S could exceed the amount of excluded COD income applied to reduce the attributes (other than credits) attributable to S or a subsidiary of S in the fifth step, which would result in a lesser positive adjustment (or a greater negative adjustment) to the basis of the S stock compared to that made in the sixth step, and increase the gain (or decrease the loss) recognized on the disposition of the S stock, which might decrease the attributes of S's shareholder available for reduction, increase the reduction of S's attributes, and result in a lesser positive adjustment (or a greater negative adjustment) to the basis of the S stock.

The IRS and Treasury Department are aware that the foregoing methodology does not prevent circular calculations in all cases, specifically certain cases in which there is a disposition of the stock of more than one subsidiary. The IRS and Treasury Department request comments regarding whether rules preventing circular calculations in these other cases are necessary. If such rules are necessary, the IRS and Treasury Department request comments regarding the approach that those rules should adopt.

Given the difficulty of the problem addressed by these regulations, the IRS and Treasury Department request comments regarding these rules prior to making them effective. Therefore, the rules described above are proposed. Before these rules are adopted as temporary or final regulations, taxpayers may rely on the rules proposed in these regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.1502–28 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–11 is amended by:

1. Revising paragraph (b)(1).
2. Redesignating paragraph (c) as paragraph (d).
3. Adding new paragraph (c).

The revision and addition read as follows:

§ 1.1502–11 Consolidated taxable income.

* * * * *

(b) *Elimination of circular stock basis adjustments when there is no excluded COD income*—(1) *In general.* If one member (P) disposes of the stock of another member (S), this paragraph (b) limits the use of S's deductions and losses in the year of disposition and the carryback of items to prior years. The purpose of the limitation is to prevent P's income or gain from the disposition of S's stock from increasing the absorption of S's deductions and losses, because the increased absorption would reduce P's basis (or increase its excess loss account) in S's stock under § 1.1502–32 and, in turn, increase P's income or gain. *See* paragraph (b)(3) of this section for the application of these principles to P's deduction or loss from the disposition of S's stock, and paragraph (b)(4) of this section for the application of these principles to multiple stock dispositions. This paragraph (b) applies only when no member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income) during the taxable year of the disposition. *See* paragraph (c) of this section for rules that apply when a member realizes excluded COD income during the taxable year of the disposition. *See* § 1.1502–19(c) for the definition of disposition.

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(c) *Elimination of circular stock basis adjustments when there is excluded COD income*—(1) *In general.* If one member (P) disposes of the stock of another member (S) in a year during which any member realizes excluded COD income, this paragraph (c) limits the use of S's deductions and losses in the year of disposition and the carryback of items to prior years, the amount of the attributes of certain members that can be reduced in respect of excluded COD income of certain other members, and the attributes that can be used to offset an excess loss account taken into account by reason of the application of § 1.1502–19(c)(1)(iii)(B). In addition to the purpose set forth in paragraph (b)(1) of this section, the purpose of these limitations is to prevent the reduction of tax attributes in respect of excluded COD income from affecting P's income, gain, or loss on the disposition of S stock (including a disposition of S stock that results from the application of § 1.1502–19(c)(1)(iii)(B)) and, in turn,

affecting the attributes available for reduction pursuant to sections 108 and 1017 and § 1.1502–28T.

(2) *Computation of taxable income, reduction of attributes, and computation of limits on absorption and reduction of attributes.* If a member realizes excluded COD income in the taxable year during which P disposes of S stock, the steps used to compute taxable income (or loss), to effect the reduction of attributes, and to compute the limitations on the absorption and reduction of attributes are as follows. These steps also apply to determine whether and to what extent an excess loss account must be taken into account as a result of the application of §§ 1.1502–19(c)(1)(iii)(B) and 1.1502–19T(b)(1).

(i) *Limitation on deductions and losses to offset income or gain.* First, the determination of the extent to which S's deductions and losses for the tax year of the disposition (and its deductions and losses carried over from prior years) may offset income and gain is made pursuant to § 1.1502–11(b)(2) and (3).

(ii) *Tentative adjustment of stock basis.* Second, §§ 1.1502–32 and 1.1502–32T are tentatively applied to adjust the basis of the S stock to reflect the amount of S's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) that is made pursuant to § 1.1502–11(b)(2), but not to reflect the realization of excluded COD income and the reduction of attributes in respect thereof.

(iii) *Tentative computation of stock gain or loss.* Third, in the case of a disposition of S stock that does not result from the application of § 1.1502–19(c)(1)(iii)(B), P's income, gain, or loss from the disposition of S stock is computed. For this purpose, the result of the computation pursuant to paragraph (c)(2)(ii) of this section is treated as the basis of such stock.

(iv) *Tentative computation of taxable income (or loss).* Fourth, taxable income (or loss) for the year of disposition (and any prior years to which the deductions or losses may be carried) is tentatively computed. For this purpose, in the case of a disposition of S stock that does not result from the application of § 1.1502–19(c)(1)(iii)(B), the tentative computation of taxable income (loss) takes into account P's income, gain, or loss from the disposition of S stock computed pursuant to paragraph (c)(2)(iii) of this section. The tentative computation of taxable income (loss) is made without regard to whether all or a portion of an excess loss account in a share of S is required to be taken into account pursuant to §§ 1.1502–19(c)(1)(iii)(B) and 1.1502–19T(b)(1).

(v) *Tentative reduction of attributes.* Fifth, the rules of sections 108 and 1017 and § 1.1502–28T are tentatively applied to reduce the attributes remaining after the tentative computation of taxable income (or loss) pursuant to paragraph (c)(2)(iv) of this section.

(vi) *Actual adjustment of stock basis.* Sixth, §§ 1.1502–32 and 1.1502–32T are applied to reflect the amount of S's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) made pursuant to paragraph (c)(2)(iv) of this section, and the excluded COD income applied to reduce attributes and the attributes tentatively reduced in respect of the excluded COD income pursuant to paragraph (c)(2)(v) of this section.

(vii) *Actual computation of stock gain or loss.* Seventh, the group's actual gain or loss on the disposition of S stock (including a disposition that results from the application of § 1.1502–19(c)(1)(iii)(B)) is computed. The result of the computation pursuant to paragraph (c)(2)(vi) of this section is treated as the basis of such stock.

(viii) *Actual computation of taxable income (or loss).* Eighth, taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) is computed. The group's actual consolidated taxable income (or loss) for the year of the disposition is computed by applying the limitation computed pursuant to paragraph (c)(2)(i) of this section, and by including the gain or loss recognized on the disposition of S stock computed pursuant to paragraph (c)(2)(vii) of this section. However, attributes that were tentatively used to offset income pursuant to paragraph (c)(2)(iv) of this section and attributes that were tentatively reduced pursuant to paragraph (c)(2)(v) of this section cannot offset any excess loss account taken into account as a result of the application of §§ 1.1502–19(c)(1)(iii)(B) and 1.1502–19T(b)(1).

(ix) *Actual reduction of attributes.* Ninth, the rules of sections 108 and 1017 and § 1.1502–28T are actually applied to reduce the attributes remaining after the actual computation of taxable income (or loss) pursuant to paragraph (c)(2)(viii) of this section.

(A) *S or a lower-tier corporation realizes excluded COD income.* If S or a lower-tier corporation of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to this paragraph (c)(2)(ix) shall not exceed the aggregate amount of excluded COD income that was tentatively applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to paragraph (c)(2)(v) of this section. The amount of the actual reduction of attributes attributable to S and any lower-tier corporation of S that may be reduced in respect of the excluded COD income of S or a lower-tier corporation of S shall not be so limited.

(B) *A member other than S or a lower-tier corporation realizes excluded COD income.* If a member other than S or a lower-tier corporation of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S pursuant to this paragraph (c)(2)(ix) shall not exceed the aggregate amount of excluded COD income that was tentatively applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S pursuant to paragraph (c)(2)(v) of this section. The amount of the actual reduction of attributes attributable to any member other than S and any lower-tier corporation of S that may be reduced in respect of the excluded COD income of S or a lower-tier corporation of S shall not be so limited.

(3) *Special rules.* (i) If the reduction of attributes attributable to a member is prevented as a result of a limitation described in paragraph (c)(2)(ix)(B) of this section, the excluded COD income that would have otherwise been applied to reduce such attributes is applied to reduce the remaining attributes of the same type that are available for reduction under § 1.1502–28T(a)(4), on a pro rata basis, prior to reducing attributes of a different type. The reduction of such remaining attributes, however, is subject to any applicable limitation described in paragraph (c)(2)(ix)(B) of this section.

(ii) To the extent S's deductions and losses in the year of disposition (or those of a lower-tier corporation of S) cannot offset income or gain because of the limitation under paragraph (b) of this section or this paragraph (c) and are not reduced pursuant to sections 108 and 1017 and § 1.1502–28T, such items are carried to other years under the applicable provisions of the Internal Revenue Code and regulations as if they were the only items incurred by S (or a

lower-tier corporation of S) in the year of disposition. For example, to the extent S incurs an operating loss in the year of disposition that is limited and is not reduced pursuant to section 108 and § 1.1502–28T, the loss is treated as a separate net operating loss attributable to S arising in that year.

(4) *Definition of lower-tier corporation.* A corporation is a lower-tier corporation of S if all of its items of income, gain, deduction, and loss (including the absorption of deduction or loss and the reduction of attributes other than credits) would be fully reflected in P's basis in S's stock under § 1.1502–32.

(5) *Examples.* For purposes of the examples in this paragraph (c), unless otherwise stated, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, all transactions are between unrelated persons, tax liabilities are disregarded, and no election under section 108(b)(5) is made. The principles of this paragraph (c) are illustrated by the following examples:

Example 1. Departing member realizes excluded COD income. (i) *Facts.* P owns all of S's stock with a $90 basis. For Year 1, P has ordinary income of $30, and S has an $80 ordinary loss and $100 of excluded COD income from the discharge of non-intercompany indebtedness. P sells the S stock for $20 at the close of Year 1. As of the beginning of Year 2, S has Asset A with a basis of $0 and a fair market value of $10.

(ii) *Analysis.* The steps used to compute the group's consolidated taxable income, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S's loss and the effect of the absorption of S's loss on P's basis in S's stock under § 1.1502–32(b), P's gain or loss from the disposition of S's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of $50 (P's $30 of income minus S's $80 loss). Under the principles of § 1.1502–21T(b)(2)(iv), all of such loss is attributable to S.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, §§ 1.1502–32 and 1.1502–32T are tentatively applied to adjust the basis of S stock. For this purpose, however, adjustments attributable to the excluded COD income and the reduction of attributes in respect thereof are not taken into account. Under § 1.1502–32(b), the absorption of $30 of S's loss decreases P's basis in S's stock by $30 to $60.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the sale of S stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a $40 loss from the sale of S stock.

(D) *Tentative computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(iv) of this section, taxable income (or loss) for the year of disposition (and any prior years to which the deductions or losses may be carried) is then tentatively computed, taking into account P's $40 loss on the sale of the S stock computed pursuant to paragraph (c)(2)(iii) of this section. The group has a $50 consolidated net operating loss for Year 1 that, under the principles of § 1.1502–21T(b)(2)(iv), is wholly attributable to S and a consolidated capital loss of $40 that, under the principles of § 1.1501–21T(b)(2)(iv), is wholly attributable to P.

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28T are tentatively applied to reduce attributes remaining after the tentative computation of taxable income (or loss). Pursuant to § 1.1502–28T(a)(2), the tax attributes attributable to S would first be reduced to take into account its $100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by $50 to $0. Then, pursuant to § 1.1502–28T(a)(4), S's remaining $50 of excluded COD income would reduce the consolidated capital loss attributable to P of $40 by $40 to $0. The remaining $10 of excluded COD income would have no effect.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, §§ 1.1502–32 and 1.1502–32T are applied to reflect the amount of S's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32(b), the absorption of $30 of S's loss, the application of $90 of S's excluded COD income to reduce attributes of P and S, and the reduction of the $50 loss attributable to S in respect of the excluded COD income results in a positive adjustment of $10 to P's basis in the S stock. P's basis in the S stock, therefore, is $100.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S stock is computed using the basis computed in the previous step. Accordingly, P recognizes an $80 loss on the disposition of the S stock.

(H) *Actual computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(viii) of this section, taxable income (or loss) is computed by taking into account P's $80 loss from the sale of S stock. Before the application of § 1.1502–28T, the group, therefore, has a consolidated net operating loss of $50 that is wholly attributable to S under the principles of § 1.1502–21T(b)(2)(iv), and a consolidated capital loss of $80 that is wholly attributable to P under the principles of § 1.1502–21T(b)(2)(iv).

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28T are then actually applied to reduce attributes remaining after the actual computation of taxable income (or loss). Pursuant to section 108(b)(4)(B) and § 1.1502–28T(a), the consolidated net operating loss attributable to S under the principles of § 1.1502–21T(b)(2)(iv) is reduced first. Accordingly, the operating loss for Year 1 that S would otherwise carry forward is reduced by $50 to $0. Then, pursuant to § 1.1502–28T(a)(4), S's remaining $50 of excluded COD income reduces consolidated tax attributes. In particular, without regard to the limitation imposed by paragraph (c)(2)(ix)(A) of this section, the $80 consolidated capital loss, which under the principles of § 1.1502–21T(b)(2)(iv) is attributable to P, would be reduced by $50 from $80 to $30. However, the limitation imposed by paragraph (c)(2)(ix)(A) of this section prevents the reduction of the consolidated capital loss attributable to P by more than $40. Therefore, the consolidated capital loss attributable to P is reduced by only $40 in respect of S's excluded COD income. The remaining $10 of excluded COD income has no effect.

Example 2. Member other than departing member realizes excluded COD income. (i) *Facts.* P owns all of S1's and S2's stock. P's basis in S2's stock is $600. For Year 1, P has ordinary income of $30, S1 has a $100 ordinary loss and $100 of excluded COD income from the discharge of non-intercompany indebtedness, and S2 has $200 of ordinary loss. P sells the S2 stock for $600 at the close of Year 1. As of the beginning of Year 2, S1 has Asset A with a basis of $0 and a fair market value of $10.

(ii) *Analysis.* The steps used to compute the group's consolidated taxable income, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S2's loss and the effect of the absorption of S2's loss on P's basis in S2's stock under § 1.1502–32(b), P's gain or loss from the sale of S2 stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of $270 (P's $30 of income minus S1's $100 loss and S2's $200 loss). Consequently, $20 of S2's loss from Year 1 is unlimited and $180 of S2's loss from Year 1 is limited under paragraph (c)(2)(i) of this section.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, §§ 1.1502–32 and 1.1502–32T are tentatively applied to adjust the basis of S2 stock. For this purpose, however, adjustments to the basis of S2 stock attributable to the reduction of attributes in respect of S1's excluded COD income are not taken into account. Under § 1.1502–32(b), the absorption of $20 of S2's loss decreases P's basis in S2's stock by $20 to $580.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the disposition of S2 stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a $20 gain from the sale of the S2 stock.

(D) *Tentative computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(iv) of this section, taxable income (or loss) for the year of disposition (and any prior years to which the deductions or losses may be carried) is then tentatively computed, taking into account P's $20 gain from the sale of S2 stock. P's $20 gain from the sale of S2's stock is offset by $20 of S1's loss. Therefore, the group is tentatively treated as having a consolidated net operating loss of $250, $70 of which is attributable to S1 and $180 of which is attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv).

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28T are tentatively applied to reduce attributes remaining after the tentative computation of taxable income (or loss). Pursuant to § 1.1502–28T(a)(2), the tax attributes attributable to S1 would first be reduced to take into account its $100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by $70, the portion of the consolidated net operating loss attributable to S1 under the principles of § 1.1502–21T(b)(2)(iv), to $0. Then, pursuant to § 1.1502–28T(a)(4), S1's remaining $30 of excluded COD income would reduce the consolidated net operating loss attributable to S2 of $180 by $30 to $150.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, §§ 1.1502–32 and 1.1502–32T are applied to reflect the amount of S2's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32(b), the absorption of $20 of S2's loss and the application of $30 of S1's excluded COD income to reduce attributes attributable to S2 results in a negative adjustment of $50 to P's basis in the S2 stock. P's basis in the S2 stock, therefore, is $550.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S2 stock is computed using the basis computed in the previous step. Therefore, P recognizes a $50 gain on the disposition of the S2 stock.

(H) *Actual computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(viii) of this section, taxable income (or loss) is computed by taking into account P's $50 gain from the disposition of the S2 stock. Before the application of § 1.1502–28T, therefore, the group has a consolidated net operating loss of $220, $40 of which is attributable to S1 and $180 of which is attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv).

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28T are then actually applied to reduce attributes remaining after the actual computation of taxable income (or loss). Pursuant to § 1.1502–28T(a)(2), the tax attributes attributable to S1 must first be reduced to take into account its $100 of excluded COD income. Accordingly, pursuant to section 108(b)(4)(B) and § 1.1502–28T(a), the net operating loss attributable to S1 under the principles of § 1.1502–21T(b)(2)(iv) is reduced first. The consolidated net operating loss for Year 1 is reduced by $40, the portion of the consolidated net operating loss attributable to S1 under the principles of § 1.1502–21T(b)(2)(iv), to $0. Then, pursuant to § 1.1502–28T(a)(4), without regard to the limitation imposed by paragraph (c)(2)(ix)(B) of this section, S1's remaining $60 of excluded COD income would reduce S2's net operating loss of $180 to $120. However, the limitation imposed by paragraph (c)(2)(ix)(B) of this section prevents the reduction of S2's loss by more than $30. Therefore, S2's loss of $180 is reduced by $30 to $150 in respect of S1's excluded COD income. The remaining $30 of excluded COD income has no effect.

Example 3. Lower-tier corporation of departing member realizes excluded COD income. (i) *Facts.* P owns all of S1's stock, S2's stock, and S3's stock. S1 owns all of S4's stock. P's basis in S1's stock is $50 and S1's basis in S4 stock is $50. For Year 1, P has $50 of ordinary loss, S1 has $100 of ordinary loss, S2 has $150 of ordinary loss, S3 has $50 of ordinary loss, and S4 has $50 of ordinary loss and $80 of excluded COD income from the discharge of non-intercompany indebtedness. P sells the S1 stock for $100 at the close of Year 1. As of the beginning of Year 2, S4 has Asset A with a basis of $0 and a fair market value of $10.

(ii) *Analysis.* The steps used to compute the group's consolidated taxable income, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S1's and S4's losses and the effect of the absorption of S1's and S4's losses on P's basis in S1's stock under § 1.1502–32(b), P's gain or loss from the disposition of S1's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of $400. Consequently, $100 of S1's loss and $50 of S4's loss is limited under paragraph (c)(2)(i) of this section.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, §§ 1.1502–32 and 1.1502–32T are tentatively applied to adjust the basis of S stock. For this purpose, adjustments to the basis of S1 stock attributable to S4's realization of excluded COD income and the reduction of attributes in respect of such excluded COD income are not taken into account. There is no adjustment under § 1.1502–32 to the basis of the S1 stock. Therefore, P's basis in the S1 stock for this purpose is $50.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the sale of S1 stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a $50 gain from the sale of the S1 stock.

(D) *Tentative computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(iv) of this section, taxable income (or loss) for the year of disposition (and any prior years to which the deductions or losses may be carried) is tentatively computed, taking into account P's $50 gain from the sale of the S1 stock computed pursuant to the previous step. P's $50 gain from the sale of the S1 stock is offset by $10 of P's loss, $30 of S2's loss, and $10 of S3's loss. Therefore, the group is tentatively treated as having a consolidated net operating loss of $350, $40 of which is attributable to P, $100 of which is attributable to S1, $120 of which is attributable to S2, $40 of which is attributable to S3, and $50 of which is attributable to S4 under the principles of § 1.1502–21T(b)(2)(iv).

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28T are tentatively applied to reduce attributes remaining after the tentative computation of taxable income (or loss). Pursuant to § 1.1502–28T(a)(2), the tax attributes attributable to S4 would first be reduced to take into account its excluded COD income in the amount of $100. Accordingly, the consolidated net operating loss attributable to S4 would be reduced by $50 to $0. Then, pursuant to § 1.1502–28T(a)(4), S4's remaining $30 of excluded COD income would reduce the consolidated net operating loss for Year 1 that is attributable to other members. Therefore, the consolidated net operating loss for Year 1 would be reduced by $30. Of that amount, $4 is attributable to P, $10 is attributable to S1, $12 is attributable to S2, and $4 is attributable to S3.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, §§ 1.1502–32 and 1.1502–32T are applied to reflect the amount of S1's and S4's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32(b), the application of $80 of S4's excluded COD income to reduce attributes, and the reduction of S4's loss in the amount of $50 and S1's loss in the amount of $10 in respect of the excluded COD income results in a positive adjustment of $20 to P's basis in the S1 stock. Accordingly, P's basis in S1 stock is $70.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S1 stock is computed using the basis computed in the previous step. Accordingly, P recognizes a $30 gain on the disposition of the S1 stock.

(H) *Actual computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(viii) of this section, the group's taxable income or loss is then computed by taking into account P's $30 gain from the sale of S1 stock. Before the application of § 1.1502–28T, therefore, the group has a consolidated net operating

loss of $370, $44 of which is attributable to P, $100 of which is attributable to S1, $132 of which is attributable to S2, $44 of which is attributable to S3, and $50 of which is attributable to S4.

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28T are then actually applied to reduce attributes remaining after the actual computation of taxable income (or loss). Pursuant to § 1.1502–28T(a)(2), the tax attributes attributable to S4 must first be reduced to take into account its $80 of excluded COD income. Accordingly, the consolidated net operating loss attributable to S4 is reduced by $50 to $0. Then, pursuant to § 1.1502–28T(a)(4), S4's remaining $30 of excluded COD income reduces the consolidated net operating loss for Year 1. Therefore, without regard to the limitation imposed by paragraph (c)(2)(ix)(B) of this section, the consolidated net operating loss for Year 1 would be reduced by $30 ($4.12 of the consolidated net operating loss attributable to P, $9.38 of the consolidated net operating loss attributable to S1, $12.38 of the consolidated net operating loss attributable to S2, and $4.12 of the consolidated net operating loss attributable to S3) to $290. However, the limitation imposed by paragraph (c)(2)(ix)(B) of this section prevents the reduction of the consolidated net operating loss attributable to P, S2, and S3 by more than $4, $12, and $4 respectively. The $.62 of excluded COD income that would have otherwise reduced the consolidated net operating loss attributable to P, S2, and S3 is applied to reduce the consolidated net operating loss attributable to S1. Therefore, S1 carries forward $90 of loss.

Example 4. Excess loss account taken into account. (i) *Facts.* P is the common parent of a consolidated group. On Day 1 of Year 2, P acquired all of the stock of S1. As of the beginning of Year 2, S1 had a $30 net operating loss carryover from Year 1, a separate return limitation year. A limitation under § 1.1502–21(c) applies to the use of that loss by the P group. For Years 1 and 2, the P group had no consolidated taxable income or loss. On Day 1 of Year 3, S1 acquired all of the stock of S2 for $10. In Year 3, P had ordinary income of $10, S1 had ordinary income of $25, and S2 had an ordinary loss of $50. In addition, in Year 3, S2 realized $20 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S2 had no liabilities. As of the beginning of Year 4, S2 had Asset A with a basis of $0 and a fair market value of $10. S2 had no taxable income (or loss) for Year 1 and Year 2.

(ii) *Analysis.* The steps used to compute the group's consolidated taxable income, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deduction and losses to offset income or gain, tentative basis adjustments, tentative computation of stock gain or loss.* Because it is not initially apparent that there has been a disposition of stock, paragraph (c)(2)(i) of this section does not limit the use of deductions to offset income or gain, no adjustments to the basis are required pursuant to paragraph (c)(2)(ii) of this section, and no stock gain or loss is computed pursuant to paragraph (c)(2)(iii) of this section or taken into account in the tentative computation of taxable income pursuant to paragraph (c)(2)(iv) of this section.

(B) *Tentative computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(iv) of this section, the group's taxable income (or loss) for Year 3 (and any prior years to which the deductions or losses may be carried) is tentatively computed. For Year 3, the P group has a consolidated taxable loss of $15, all of which is attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv).

(C) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and §§ 1.1502–28T are tentatively applied to reduce attributes remaining after the tentative computation of consolidated taxable loss. Pursuant to § 1.1502–28T(a)(2), the tax attributes attributable to S2 would first be reduced to take into account its excluded COD income of $20. Accordingly, the net operating loss attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv) is reduced first. Therefore, the consolidated net operating loss for Year 3 is reduced by $15, the portion of the consolidated net operating loss attributable to S2, to $0. The remaining $5 of excluded COD income is not applied to reduce attributes as there are no remaining attributes that are subject to reduction.

(D) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, §§ 1.1502–32 and 1.1502–32T are applied to reflect the amount of S2's unlimited deductions and losses that are absorbed in the tentative computation of taxable income (or loss) for the year of the disposition (and any prior years to which the deductions or losses may be carried) and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Pursuant to §§ 1.1502–32 and 1.1502–32T, the absorption of $35 of S2's loss, the application of $15 in respect of S2's excluded COD income to reduce attributes, and the reduction of $15 in respect of the loss attributable to S2 reduced in respect of the excluded COD income results in a negative adjustment of $35 to the basis of the S2 stock. Therefore, S1 has an excess loss account of $25 in the S2 stock.

(E) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, S1's actual gain or loss, if any, on the S2 stock is computed. Because S2 realized $5 of excluded COD income that was not applied to reduce attributes, pursuant to §§ 1.1502–19(c)(1)(iii)(B) and 1.1502–19T(b)(1), S1 is required to take into account $5 of its excess loss account in the S2 stock.

(F) *Actual computation of taxable income (or loss).* Pursuant to paragraph (c)(2)(viii) of this section, the group's taxable income or loss is computed taking into account the $5 of the excess loss account in the S2 stock required to be taken into account. *See* § 1.1502–28T(b)(6) (requiring an excess loss account that is required to be taken into account as a result of the application of § 1.1502–19(c)(1)(iii)(B) to be included in the group's consolidated taxable income for the year that includes the date of the debt discharge). However, pursuant to paragraph (c)(2)(viii) of this section, such amount may not be offset by any of the consolidated net operating loss attributable to S2. It may, however, subject to applicable limitations, be offset by the separate net operating loss of S1 from Year 1.

(G) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28T are then actually applied to reduce attributes remaining after the actual computation of taxable income (or loss). Attributes will be actually reduced in the same way that they were tentatively reduced.

(6) *Additional rules for multiple dispositions.* [Reserved]

(7) *Effective date.* This paragraph (c) applies to dispositions of subsidiary stock that occur after the date these regulations are published as temporary or final regulations in the **Federal Register.** Taxpayers may apply this paragraph (c), as contained in these proposed regulations, in whole, but not in part, to any disposition of subsidiary stock that occurs before the date these regulations are published as temporary or final regulations in the **Federal Register**.

Par. 3. Section 1.1502–13 is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

[The text of this proposed section is the same as the text of § 1.1502–13T(g)(3)(ii)(B) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1502–28 is amended as follows:

1. Adding paragraphs (b)(4), (b)(5), (b)(6) and (b)(7).

2. Revising paragraph (d).

3. The additions and revision read as follows:

1.1502–28 Consolidated section 108.

* * * * *

(b)(4) and (5) [The text of paragraphs (b)(4) and(5) is the same as the text of § 1.1502–28T(b)(4) and (5) published elsewhere in this issue of the **Federal Register**].

(6) *Taking into account of excess loss account*—(i) *Determination of inclusion.* The determination of whether any portion of an excess loss account in a share of stock of a subsidiary that realizes excluded COD income is required to be taken into account as a result of the application of § 1.1502–19(c)(1)(iii)(B) is made after the determination of taxable income (or loss) for the year during which the member realizes excluded COD income (without regard to whether any portion

of an excess loss account in a share of the subsidiary is required to be taken into account) and any prior years to which the deductions or losses of the subsidiary may be carried, after the reduction of tax attributes pursuant to sections 108 and 1017, and this section, and after the adjustment of the basis of the share of stock of the subsidiary pursuant to § 1.1502–32 to reflect the amount of the subsidiary's deductions and losses that are absorbed in the computation of taxable income (or loss) for the year of the disposition and any prior years to which the deductions or losses may be carried, and the excluded COD income applied to reduce attributes and the attributes reduced in respect thereof. *See* § 1.1502–11(c) for special rules related to the computation of taxable income (or loss) that apply when an excess loss account is required to be taken into account.

(ii) [The text of paragraph (b)(6)(ii) is the same as the text of § 1.1502–28T(b)(6)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(7) *Dispositions of stock. See* § 1.1502–11(c) for limitations on the reduction of tax attributes when a member disposes of stock of another member (including dispositions that result from the application of § 1.1502–19(c)(1)(iii)(B)) during a taxable year in which any member realizes excluded COD income.

* * * * *

(d) *Effective dates.* (1) This section, other than paragraphs (a)(4), (b)(4), (b)(5), (b)(6), and (b)(7) of this section, applies to discharges of indebtedness that occur after August 29, 2003.

(2) Paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 11, 2003. However, groups may apply paragraph (a)(4) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 11, 2003. For discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 11, 2003, paragraph (a)(4) of this section shall apply as in effect on August 29, 2003.

(3) Paragraphs (b)(4), (b)(5), and (b)(6)(ii) of this section apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after March 12, 2004. However, groups may apply paragraphs (b)(4), (b)(5), and (b)(6)(ii) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before March 12, 2004.

(4) Paragraphs (b)(6)(i) and (b)(7) of this section apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**. However, groups may apply paragraphs (b)(6)(i) and (b)(7) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before the date these regulations are published as temporary or final regulations in the **Federal Register**.

* * * * *

Par. 5. The last sentence of paragraph (c) of § 1.1502–80 is revised to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(c) * * * *See* §§ 1.1502–11(d) and 1.1502–35T for additional rules relating to stock loss.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–5667 Filed 3–12–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of cancellation of March 29, 30, and 31, 2004, Negotiated Rulemaking Committee meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces the cancellation of the ninth meeting of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C–DAC) previously scheduled for March 29, 30, and 31, 2004. The next C–DAC meeting will be held May 2004. A **Federal Register** notice specifying the exact dates and times for this meeting will be published at a later time.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 04–5746 Filed 3–12–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–04–004]

RIN 1625–AA84

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 608

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a safety zone around a petroleum and gas production facility in Green Canyon 608 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed rule would prohibit all vessels from entering or remaining in the specified area around the facility's location except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: Comments and related material must reach the Coast Guard on or before May 14, 2004.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA, 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal

holidays. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of docket (CGD08–04–004) and will be available for inspection or copying at the location listed above during the noted time periods.

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

SUPPLEMENTARY INFORMATION:

Requests for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–04–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The Coast Guard proposes the establishment of a safety zone around the Marco Polo Tension Leg Platform (the Platform), a petroleum and gas production facility in the Gulf of Mexico. The platform is located in Green Canyon 608 (GC 608), at position 27°21′43.32″ N, 90°10′53.01″ W.

This proposed safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the proposed safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairway nearest the proposed safety zone is the South of Gulf Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Anadarko Petroleum Corporation, hereafter referred to as Anadarko, has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Marco Polo TLP.

The request for the safety zone was made due to the high level of shipping activity around the site of the facility, high levels of production volumes, the number of personnel on board the platform, and environmental safety concerns. Anadarko indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event.

The Coast Guard has evaluated Anadarko's information and concerns against Eighth Coast Guard District criteria developed to determine if an Outer Continental Shelf facility qualifies for a safety zone. Several factors were considered to determine the necessity of a safety zone for the Marco Polo Tension Leg Platform facility: (1) The facility is located approximately 35 nautical miles south-southwest of the South of Gulf Safety Fairway; (2) the facility has a high daily production capacity of petroleum oil and gas; (3) the facility is manned; and (4) the facility is a tension leg platform.

We conclude that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this proposed safety zone. The proposed rule would significantly reduce the threat of allisions, oil spills and natural gas releases and increases the safety of life, property, and the environment in the Gulf of Mexico. This proposed regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Proposed Rule

The proposed safety zone would encompass the area within 500 meters (1640.4 feet) from each point on the Platform's outer edge. No vessel would be allowed to enter or remain in this proposed safety zone except the following: (1) An attending vessel; (2) a vessel under 100 feet in length overall not engaged in towing; or (3) a vessel authorized by the Commander, Eighth Coast Guard District.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 proposed rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The impacts on routine navigation are expected to be minimal because the proposed safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Since the Platform is located far offshore, few privately owned fishing vessels, recreational boats and yachts operate in the area and alternate routes are available for those vessels. This proposed rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Use of an alternate route may cause a vessel to incur a delay of 4 to 10 minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this proposed rule on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it,

please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Add § 147.837 to read as follows:

§ 147.837 Marco Polo Tension Leg Platform safety zone.

(a) *Description.* Marco Polo Tension Leg Platform, Green Canyon 608 (GC 608), located at position 27°21′43.32″ N, 90°10′53.01″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel; or

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: February 26, 2004.

R.F. Duncan,

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

[FR Doc. 04–5793 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1240, 1242, 1244, and 1246

RIN 3095–AB16

Federal Records Management; Proposed Regulatory Framework

AGENCY: National Archives and Records Administration (NARA).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NARA is seeking comments from Federal agencies and the public on

our regulations for Federal records management. We are considering revising and reorganizing the existing regulations to make the regulations easier to read, understand, and use. A proposed table of contents for the revision, which includes parenthetical references to the current configuration of the regulations, is also provided for review and comment.

Dates: Submit comments on or before May 14, 2004.

ADDRESSES: NARA invites interested persons to submit comments on this ANPRM. Please include "Attn: 3095–AB16" and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *comments@nara.gov*. If you do not receive a confirmation that we have received your e-mail message, contact Cheryl Stadel-Bevans at 301–837–3021.
- Fax: Submit comments by facsimile transmission to 301–837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number 301–837–3021 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION:

Background

NARA is concerned that the current Federal records management regulations do not reflect many of the recent changes in records management and, therefore, need updating to meet the challenges of a changing recordkeeping environment. We are considering revising the existing regulations to incorporate current standards and practices, such as new guidance on electronic recordkeeping and relevant portions of ISO 15489–1:2001, Records management—Part 1: General (ISO Records Management Standard).

In addition, we propose to restructure the regulations to better reflect the lifecycle of records, from creation through active agency use to disposition. We are considering consolidating all definitions under 36 CFR 1220; reorganizing the Parts of 36 CFR Chapter XII, Subchapter B, to more clearly reflect the lifecycle of records; and elevating subparts in the current 36 CFR 1228 to parts, for better emphasis. The regulations would also be re-written in accordance with plain language principles (such as using the question-style for the section headings) to make them easier to read, understand, and use.

Our goal is to make it easier for Federal agencies and records management contractors to follow our regulations. As part of the revision, we also intend to address the issues raised in the advance notice of proposed rulemaking, Records Management; Electronic Text Documents (RIN 3095–AB05) that was published October 10, 2001 (66 FR 51740).

More information about NARA's Redesign of Federal Records Management may be found online at *http://www.archives.gov/records_management/initiatives/rm_redesign_project.html*.

Questions for Comment

What do you think about this proposal? Do you agree that the current Federal records management regulations need revision? Which regulations do you think need updating, revision, or expansion? Are there other records management issues that NARA should address? If you think the NARA regulations need to be revised, are there any priority areas that should be addressed first? Will the proposed reorganization of 36 CFR chapter XII, subchapter B, make the regulations easier to use? Will consolidating definitions in one section be useful? How do you see the proposed revision affecting the records management programs of Federal agencies? Please specify what further changes you would like to see.

Dated: March 2, 2004.

Lewis J. Bellardo,

Deputy Archivist of the United States.

The following table of contents is a proposed outline for reorganizing the regulations for Federal records management and includes parenthetical references to the current configuration of the regulations. We attempted to lay out the regulations in a more serviceable order from the current structure. Please review and comment on the outline.

PART 1220—FEDERAL RECORDS, GENERAL

SEC.

1220.1 Scope of subchapter. [1220.1]
1220.2 Responsibility for records management programs. [1220.2]

Subpart A—General Provisions

1220.10 Authority. [1220.10]
1220.12 Applicability. [1220.12]
1220.14 Definitions. (all definitions in current CFR—add definition for trustworthy (*see* old 1234.26), authenticity, reliability, integrity (see old 1234.26(b)), usability, risk, and definitions from other sources as appropriate) [1220.14, 1222.12, 1228.226, 1230.4. 1232.10, 1234.2, 1236.14]

Subpart B—Agency Records Management Programs

1220.30 Authority. [1220.30]
1220.32 Program content. [1220.32]
(a) Cooperation with NARA. [1220.32(a)]
(b) Agency internal evaluation. [1220.42]
(c) Compliance. [1220.32(b)]
1220.34 Creation of records. [1220.34]
1220.36 Maintenance and use of records. [1220.36]
1220.38 Disposition of records. [1220.38]
1220.40 Liaison offices. [1220.40]

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

Subpart A—General

Sec.
1222.10 Authority. [1222.10]
1222.12 Understanding what a Federal record is. [1222.12]

Subpart B—Program Requirements

1222.20 Agency responsibilities. [1222.20]

Subpart C—Agency Recordkeeping Requirements

1222.30 Purpose. [1222.30]
1222.32 General requirements. [1222.32]
1222.34 Identifying Federal records. [1222.34]
1222.36 Identifying personal papers. [1222.36]
1222.38 Recordkeeping requirements.
(a) Categories of documentary materials. [1222.38]
(b) Levels of recordkeeping requirements. [New]
(1) Agency.
(2) Program.
(3) Series/system.
1222.40 Preventing the unauthorized removal of records. [1222.40]
1222.42 Authorizing the removal of nonrecord material. [1222.42]
1222.44 Records management directives. [1222.44]
1222.46 Recordkeeping requirements of other agencies. [1222.46]
1222.48 Contractor records. [1222.48]
1222.50 Records maintenance and storage. [1222.50]

PART 1223—MANAGEMENT OF VITAL RECORDS

Subpart A—General

Sec.
1223.10 Purpose. [1236.10]
1223.12 Authority. [1236.12]

Subpart B—Vital Records

1223.20 Program objectives. [1236.20]
1223.22 Identification. [1236.22]
1223.24 Use of vital records. [1236.24]
1223.26 Protection of vital records. [1236.26]

[FR Doc. 04–5625 Filed 3–12–04; 8:45 am]
BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 133–5066b; FRL–7636–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Regulations for General Compliance Activities and Source Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of Virginia for the purpose of updating certain requirements related to applicability, compliance, testing and monitoring to be consistent with Federal requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 14, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen.@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number VA133–5066 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 *morris.makeba@epa.gov,* attention VA133–5066. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

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

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

Submittal of CBI Comments

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

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

Considerations When Preparing Comments to EPA

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

Dated: March 2, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–5638 Filed 3–12–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT32

Migratory Bird Hunting; Approval of Three Shot Types—Tungsten-Bronze-Iron, Tungsten-Iron, and Tungsten-Tin-Bismuth—as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We (Fish and Wildlife Service) propose to approve three shot types, Tungsten-Bronze-Iron [formulated of tungsten, bronze (copper and tin), and iron], Tungsten-Iron (formulated of tungsten and iron), and Tungsten-Tin-Bismuth (formulated of tungsten, tin, and bismuth), as nontoxic for hunting waterfowl and coots. We assessed possible effects of all three shot types, and have determined that none of the types presents any significant toxicity threat to wildlife or their habitats; therefore, further testing is not necessary for any of the types. In addition, approval of these shot types may encourage greater numbers of waterfowl hunters to refrain from the illegal use of lead shot, thereby reducing lead risks to species and habitats.

DATES: We must receive comments on the proposed rule no later than April 14, 2004.

ADDRESSES: You may submit comments, identified by RIN 1018–AT32, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *migratorybirds@fws.gov.*
- Fax: 703–358–2272.
- Mail: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610. You may inspect comments during normal business hours at the same address.
- Hand Delivery/Courier: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

Instructions: All submissions received must include Regulatory Information Number (RIN) 1018–AT32 at the beginning. All comments received, including any personal information provided, will be available for public inspection at the above ("Hand Delivery/Courier") address. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, telephone (703) 358–1714; Dr. George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, telephone (703) 358–1825; or John J. Kreilich, Jr., Wildlife Biologist, Division of Migratory Bird Management, (703) 358–1928.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of shot and release of shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that the effects of ingestion of spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We first addressed the issue of lead poisoning in waterfowl in a 1976 Environmental Impact Statement (EIS), and later readdressed the issue in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, and set a ban on lead for waterfowl and coot hunting beginning in 1991. Since then, we have sought to consider other potential nontoxic shot candidates; we believe that other nontoxic shot types should be made available for public use in hunting. Steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel-iron, and tungsten-tin-iron-nickel types are now approved as nontoxic. [Our previously approved tungsten-iron shot, an alloy of approximately 40 percent tungsten and 60 percent iron, announced with a final rule in the **Federal Register** on August 19, 1999 (64 FR 45399), differs in composition from the newly proposed tungsten-iron shot, which is an alloy of approximately 22 percent tungsten and 78 percent iron.] Compliance with the use of nontoxic shot for waterfowl hunting has increased over the last few years (Anderson *et al.* 2000). We believe that it will continue to increase as other nontoxic shot types are approved and available in growing numbers.

The purpose of this proposed rule is to approve the use of Tungsten-Bronze-Iron (TBI) shot, Tungsten-Iron (TI) shot, and Tungsten-Tin-Bismuth (TTB) shot for waterfowl and coot hunting.

Applications for Approval as Nontoxic Shot Types

The following applicants have applied to us for approval of the following shot types and compositions, and we have announced these applications in the **Federal Register:**

Applicant	Shot type (abbreviation in this document)	Shot formulation by weight	Density	**Federal Register** citation
International Nontoxic Composites Corporation.	tungsten-bronze-iron (TBI)	51.1% tungsten, 44.4% copper, 3.9% tin, 0.6% iron.	12.1 grams (g)/centimeter $(cm)^3$.	68 FR 65023, November 18, 2003
ENVIRON-Metal, Inc.	tungsten-iron (TI) (under product name HEVI-Steel™).	22% tungsten, 78% iron ...	9 g/cm^3	68 FR 60897, October 24, 2003

Applicant	Shot type (abbreviation in this document)	Shot formulation by weight	Density	Federal Register citation
Victor Oltrogge	tungsten-tin-bismuth (TTB) (under product name Silvex™).	49—71% tungsten, 29–51% tin, 0.5–6.5% bismuth.	10.5 to 13.0 g/cm^3	68 FR 60898, October 24, 2003

For each of the three shot types, the initial application (Tier 1) included information on chemical characterization, production variability, use volume, toxicological effects, environmental fate and transport, and evaluation. After reviewing the initial (tier 1) application for and assessing the possible effects of each of the three shot types, we have concluded that none of the shot types poses a significant toxicity threat to wildlife or their habitats. Therefore, we propose to amend 50 CFR 20.21(j), which describes approved types of shot for waterfowl and coot hunting.

Waterfowl Populations

The taxonomic family Anatidae, principally subfamily Anatinae (ducks) and their habitats, comprise the affected environment. Waterfowl habitats and populations in North America this year were described by the U.S. Fish and Wildlife Service (2003).

In the Breeding Population and Habitat Survey for the traditional waterfowl survey area in North America, the total duck population estimate was 36.2 ± 0.7 (±1 standard error) million birds, 16 percent above the 2002 estimate of 31.2 ± 0.5 million birds (P<0.001), and 9 percent above the 1955–2002 long-term average (P<0.001). There were 7.9 ± 0.3 million mallards (*Anas platyrhynchos*) in the traditional survey area, a value similar to the 2002 estimate of 7.5 ± 0.2 million birds (P=0.220) and to the long-term average (P=0.100). Blue-winged teal (*Anas discors*) were at 5.5 ± 0.3 million birds, 31 percent above the 2002 estimate of 4.2 ± 0.2 million birds (P=0.001) and 23 percent above the long-term average (P=0.001). Shovelers (*Anas clypeata*) at 3.6 ± 0.2 million (+56 %) and pintails (*Anas acuta*) at 2.6 ± 0.2 million (+43 %) were above their 2002 estimates (P<0.001). Gadwall (*Anas strepera*) at 2.5 ± 0.2 million, American wigeon (*Anas americana*) at 2.6 ± 0.2 million, green-winged teal (*Anas crecca*) at 2.7 ± 0.2 million, redheads (*Aythya americana*) at 0.6 ± 0.1 million, canvasbacks (*Aythya valisineria*) at 0.6 ± 0.1 million, and scaup (*Aythya marila* and *Aythya affinis*) at 3.7 ± 0.2 million were unchanged from their 2002 estimates (P=0.149). Gadwall (+55%) and shovelers (+72%) were above their long-term averages (P<0.001). Green-winged teal were at their second highest level since 1955, 46 percent above their long-term average (P<0.001). Pintails (−39%) and scaup (−29%) remained well below their long-term averages (P<0.001). American wigeon, redheads, and canvasbacks were unchanged from their long-term averages (P=0.582).

The 2003 total duck population estimate for the eastern survey area was 3.6 ± 0.3 million birds. This was 17 percent lower than in 2002 (4.4 ± 0.3 million birds, P=0.065), but similar to the 1996–2002 average (P=0.266). Individual species estimates were similar to those from 2002 and to their 1996–2002 averages, with the exception of mergansers (0.6 ± 0.1 million), which decreased 30 percent from the 2002 estimate (P=0.035).

Habitats

The total number of May ponds in Prairie Canada and the north-central United States, at 5.2 ± 0.2 million, was 91 percent higher than in 2002 (P<0.001) and 7 percent above the long-term average (P=0.034). Canadian and U.S. ponds were 3.5 ± 0.2 and 1.7 ± 0.1 million, respectively, and both above 2002 (+145% and +30%, P<0.001). The number of ponds in Canada was similar to the 1961–2002 average (P=0.297), while U.S. ponds were 10 percent above their 1974–2002 average (P=0.037).

Waterfowl hunting occurs in habitats used by many taxa of migratory birds, as well as by aquatic invertebrates, amphibians, and some mammals. Fish also may be found in many hunting locations.

Estimated Environmental Concentrations

Terrestrial Settings

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 #4 shot per hectare (2.47 acres) (50 CFR 20.134).

TBI Shot

For TBI shot, if the shots are completely dissolved, the EEC for tungsten in soil is 12.92 g/m^3. In dry, porous soil, the EECs for copper, tin, and iron are 11.22, 0.99, and 0.15 g/m^3, respectively. The EEC for tungsten from TBI shot is below that for tungsten-matrix shot.

Tungsten is very rare, and is never found free in nature. The tungsten concentration in the earth's crust is estimated to be 1.5 parts per million (ppm). In conterminous U.S. soils, copper and tin are found at approximately 17 and 0.9 ppm, respectively (Shacklette and Boerngen 1984). The terrestrial EEC for copper is considerably below the U.S. Environmental Protection Agency (EPA) maximum for sludge to be applied in terrestrial settings. The EEC for tin is comparable to the concentration found in U.S. soils. Iron is widespread in such settings, comprising approximately 2 percent of the composition of soils and sediments in the United States. The EEC for iron from all three shot types is much lower than that level.

TI Shot

For TI shot, if the shot are completely dissolved, the EEC for tungsten in soil is 14.08 mg/kg. The EEC for iron is less than 0.01% of the typical background concentration, and the iron is in an insoluble form.

TTB Shot

Assuming complete dissolution of the shot, the EEC for tungsten in soil is 10.1 mg/kg to 18.5 mg/kg, depending on the shot formulation. The EEC for tin in soil is 6.77 mg/kg to 10.5 mg/kg depending on the shot formulation. This is considerably smaller than the 50 mg/kg suggested maximum concentration in surface soil tolerated by plants (Kabata-Pendias and Pendias 2001). The EEC for tin also is comparable to the concentration found in U.S. soils. The EEC for bismuth in soil is 0.130 mg/kg to 1.28 mg/kg, depending on the shot formulation.

Aquatic Settings

TBI Shot

The EEC for water assumes that 69,000 #4 shot are completely dissolved in 1 hectare of water 1 foot (30.48 cm) deep (50 CFR 20.134). For TBI shot, the EEC for tungsten is 2.119 mg/Liter (L). The EEC value for copper in water is 1.842 mg/L. This EEC is approximately 153 times the EPA (2002) 12-microgram (mcg)/L 4-day average continuous concentration criterion for copper. It is about 635 times the 2.9 mcg/L criterion for salt water.

The EEC value for tin in an aquatic setting is 0.162 mg/L. We found no EPA aquatic criterion for elemental tin.

The aquatic EEC for iron in water is 0.025 mg/L. The EPA water quality criterion for iron in fresh water is 1,000 mcg/L. We are not aware of an EPA criterion for salt water.

TI Shot

The EECs for the elements in TI shot in water are 846.7 mcg/L for tungsten and 3,001.6 mcg/L for iron. Earlier, we concluded that a tungsten concentration of 10,500 mcg/L posed no threat to aquatic life (62 FR 4877, January 31, 1997).

The EEC for iron is below the chronic criterion for protection of aquatic life. Previous assessments of tungsten demonstrated dissolution at a rate of 10.5 mg/L (equal to 10,500 mcg/L) and concluded no risk to aquatic life (62 FR 4877). The EEC of tungsten from TI is 846.7 mcg/L. This level is less than one-tenth of the 10,500 mcg/L level previously mentioned.

TTB Shot

The EEC for tungsten in water is 2,150 mcg/L to 3,940 mcg/L, depending on the shot formulation. The EEC for tin in water is 1,444 mcg/L to 2,240 mcg/L, depending on the shot formulation. The EEC for bismuth in water is 27.7 mcg/L to 274 mcg/L, depending on the shot formulation.

Previous assessments of tungsten demonstrated dissolution at a rate of 10.5 mg/L (equal to 10,500 mcg/L) and concluded no risk to aquatic life (62 FR 4877). The EEC of tungsten from TTB shot is no more than 3,940 mcg/L. This level is approximately one-third of the 10,500 mcg/L level previously mentioned.

Tin occurs naturally in soils at 2 to 200 mg/g with areas of enrichment at much higher concentrations (up to 1,000 mg/g) (WHO 1980). However, in the United States, soil concentrations are between 1 and 5 ppm (Kabata-Pendias and Pendias 2001).

The EEC for bismuth in water is 27.7 mcg/L to 274 mcg/L, depending on the shot formulation. Bismuth is a relatively rare metal. It is considered nontoxic [U.S. Geological Survey (USGS) 2003].

Environmental Fate of the Components

Elemental tungsten and iron are virtually insoluble in water, and therefore do not weather and degrade in the environment. Tungsten is stable in acids and does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984). Elemental copper can be oxidized by organic and mineral acids that contain an oxidizing agent. Elemental copper is not oxidized in water (Aaseth and Norseth 1986). In water, tin is stable under ambient conditions.

Toxicological Effects

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth, and can cause diarrhea, coma, and death in mammals (*e.g.* Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. Tungsten powder added to the food of young rats at 2, 5, and 10 percent by mass for 70 days did not affect health or growth (Sax and Lewis 1989). A dietary concentration of 94 ppm did not reduce weight gain in growing rats (Wei *et al.* 1987). Exposure to pure tungsten through oral, inhalation, or dermal pathways is not reported to cause any health effects (Sittig 1991).

Tungsten salts are toxic to mammals. Lifetime exposure to 5 ppm tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Schroeder and Mitchener 1975). At 100 ppm tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Kraabel *et al.* (1996) surgically embedded tungsten-tin-bismuth shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. The authors found that the shot neither produced toxic effects nor induced adverse systemic effects in the ducks during the 8-week period of their study.

Chickens given a complete diet showed no adverse effects of 250 ppm sodium tungstate administered for 10 days in the diet. However, 500 ppm in the diet reduced xanthine oxidase activity and reduced growth of day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 ppm tungsten (Nell *et al.* 1981). Ecological Planning and Toxicology (1999) concluded that the No Observed Adverse Effect Level for tungsten for chickens should be 250 ppm in the diet; the Lowest Observed Adverse Effect Level should be 500 ppm. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten. As we found in our reviews of other tungsten shot types, we have no basis for concern about the toxicity of the tungsten in TI or TTB shot to fish, mammals, or birds.

Copper is a dietary essential for all living organisms. In most mammals, ingestion of one TBI shot pellet would result in release of 8 to 25 milligrams (mg) of copper, not all of which would be absorbed. In humans, ingestion of a TBI shot pellet could mobilize approximately 8 mg of copper, though again not all would be absorbed. These low levels of copper would not pose any risk to mammals. Copper poisoning due to ingestion of TBI shot is highly unlikely in most mammals.

Copper requirements in birds may vary depending on intake and storage of other minerals (Underwood 1971). The maximum tolerable level of dietary copper during the long-term growth of chickens and turkeys is 300 ppm (Committee on Mineral Toxicity in Animals 1980). Eight-day-old ducklings were fed a diet supplemented with 100 ppm copper as copper sulfate for 8 weeks. They showed greater growth than controls, but some thinning of the caecal walls (King 1975). Studying day-old chicks, Poupoulis and Jensen (1976) reported that no gizzard lining erosion could be detected in chicks fed 125 ppm of copper for 4 weeks, but they detected slight gizzard erosion in chicks fed 250 ppm copper. The authors found that it required 500 to 1,000 ppm of copper to depress growth and weight gain of chicks. Jensen *et al.* (1991) found that 169 ppm copper in the diet produced maximal weight gain in chickens.

The influence of dietary copper addition on the body mass and reproduction of mature domestic chickens was analyzed by Stevenson and Jackson (1980). Hens fed on a diet containing 250 ppm copper for 48 days showed a similar daily rate of food intake as control hens (no copper in the diet). The mean number of eggs laid daily also did not differ between hens fed 250 ppm copper and controls. Negative effects on the daily food intake, body mass loss, and egg laying rates were observed only at dietary copper levels in excess of 500 ppm, and after 4 months of being fed such diets.

Similar performance tests on growing domestic turkeys showed that 300 ppm copper in the daily diet produced no long-term effect on 1-week-old turkey poults, but 800 ppm of copper in the diet for 3 weeks inhibited growth (Supplee 1964). Vohra and Kratzer

(1968) reported no effect of feeding 400 ppm of copper as copper sulfate to turkey poults in the daily diet for 21 weeks, and concluded that poults could tolerate 676 ppm of copper without exhibiting deleterious effects. However, these authors reported reduced growth of poults fed 800 ppm and 910 ppm of copper over the same time, and death at 3,240 ppm in the diet. This conclusion was supported by Christmas and Harms (1979), who found that copper in the diet of domestic turkeys had to rise to the 500–750 ppm level before signs of slight toxicity appeared, assuming that adequate methionine were also present.

Henderson and Winterfield (1975) reported acute copper toxicity in 3-week-old Canada geese (*Branta canadensis*) that had ingested water contaminated with copper sulfate. The authors calculated the copper intake to be about 600 mg copper sulfate/kg body weight, or 239 mg Cu/kg. The amount of copper released from eight #4 shot would be 42.26 mg, which is much less than the 239 mg/kg toxic level.

Ingested copper shot does not increase mortality among mallards. Ducks dosed with eight #6 copper shot showed no toxic effects due to copper (Irby *et al.* 1967).

Inorganic tin compounds are comparatively harmless. Inorganic tin and its salts are poorly absorbed, their oxides are relatively insoluble, and they are rapidly lost from tissues (*see* Eisler 1989 for reviews). Reviews indicate that elemental tin is not toxic to birds (Cooney 1988, Eisler 1989). Tin shot designed for waterfowl hunting is used in several European countries. We are aware of no reports that suggest that tin shot causes toxicity problems for wildlife.

On mallard ducks, Grandy *et al.* (1968) and the Huntingdon Research Centre (1987) conducted acute toxicity tests lasting 30 and 28 days, respectively, by placing tin pellets inside the ducks' digestive tracts or tissues. They reported that all treated ducks survived without deleterious effects.

Elemental and inorganic tins have low toxicity, due largely to low absorption rate, low tissue accumulation, and rapid excretion rates. Inorganic tin is only slightly to moderately toxic to mammals. The oral LD_{50} values for tin (II) chloride for mice and rats are 250 and 700 mg/kg of body weight, respectively (WHO 1980).

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight #4 shot. There were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Bismuth is the only nontoxic heavy metal (USGS 2003). Ringelman *et al.* (1993) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of 39 percent tungsten, 44.5 percent bismuth, and 16.5 percent tin (TBT shot) by weight, respectively. All the test birds survived and showed normal behavior. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and undosed birds were judged to be unrelated to shot exposure. Although bismuth concentrations in kidney and liver were near detectable limits, they did not differ between dosed and undosed birds. This study concluded that "TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study."

As noted for tungsten, Kraabel *et al.* (1996) imbedded TBT shot in muscles of ducks for an 8-week study. They determined that the shot neither produced toxic effects nor induced any adverse systemic effects on the health of the ducks.

The 2 percent tin in bismuth-tin (BT) shot produced no toxicological effects in ducks during reproduction. It did not affect the health of ducks, the reproduction by male and female birds, or the survival of ducklings over the long term (Sanderson *et al.* 1997).

In a 30-day dosing study with game-farm mallards dosed with eight #4 tin shot, there were no overt signs of toxicity or treatment-related effects on body weight. Tin was not detected in any tissues (Gallagher *et al.* 1999).

Based on the toxicological report and the toxicity tests for tin shot, we concluded that tin shot, which was approximately 99.9 percent tin by weight, posed no significant danger to migratory birds or other wildlife and their habitats (65 FR 76885, December 7, 2000). We believe the small amount of tin in TBI shot is not likely to harm waterfowl.

TBI shot will rapidly be broken up and dissolved in the gizzard if ingested by waterfowl. TBI shot disintegrated completely in less than 14 days under chemical action alone, according to data submitted by International Nontoxic Composites (INC). The INC submission also asserted that "action of the gizzard assisted by grit would cause complete fragmentation in a much shorter time, probably less than 1 week. Moreover, the fine pieces of shot that are released in a gizzard would quickly leave the gizzard, so lowering the overall dissolution of copper."

Ingestion of TBI shot by waterfowl would subject the shot to low pH and grinding in the gizzard. Based on an *in vitro* simulation, INC concluded that ingestion of eight #4 TBI shot (1.39 g) would release a maximum of 42.26 mg of copper each day for 1 week or less. In a diet of 150 g of dry food, that release is equivalent to 281.7 ppm copper. In young chickens, 500 ppm or more reduced body growth when ingested for 1 month (Poupoulis and Jensen 1976). Stevenson and Jackson (1980) determined that adult chickens suffered negative effects of copper ingestion only at dietary levels in excess of 500 ppm for 4 months. Copper toxicosis in young Canada geese was triggered by ingestion of water that contained approximately 239 mg/kg of body weight (Henderson and Winterfield 1975).

INC also suggested that "The Tungsten-Bronze-Iron shot will also liberate iron ions at the same time that copper is being dissolved in the gizzard. The iron in solution could moderate the uptake of copper from the small intestine of the bird (see Davis and Mertz 1987)."

Iron is an essential nutrient. Iron toxicosis in mammals is primarily a phenomenon of overdosing of livestock. Maximum recommended dietary levels of iron range from 500 ppm for sheep to 3,000 ppm for pigs (National Research Council [NRC] 1980). The amounts of iron in TBI and TI shots would not pose a hazard to mammals.

Chickens require at least 55 ppm iron in the diet (Morck and Austic 1981). There were no ill effects on chickens fed 1,600 ppm iron in an adequate diet (McGhee *et al.* 1965). Turkey poults fed 440 ppm in the diet suffered no adverse effects. Tests in which eight #4 tungsten-iron shot were administered to each mallard in a toxicity study indicated that the 45 percent iron content of the shot had no adverse effects on the test animals (Kelly *et al.* 1998).

Environmental Concentrations

We have previously approved as nontoxic other shot types that contain tungsten, iron, and tin. Previous assessments of tungsten-iron, tungsten-polymer, tungsten-matrix, and tungsten-nickel-iron shot indicated that neither the tungsten nor the iron in TBI shot should be of concern in aquatic systems. Similarly, release of tin and iron from TBI shot should not harm aquatic or terrestrial systems. It is generally agreed that inorganic tin and tin compounds are comparatively harmless (Eisler

1989). The release of iron from the shot would be insignificant in natural settings. Reviews of past studies for approvals of other tungsten-based and iron-based nontoxic shot types also support the idea that ingestion of TBI or TI shot will not cause harm to birds or mammals. We have no concerns about approving an additional shot that contains these metals.

However, the 1.842 mg/L EEC for copper from TBI shot calculated for Tier 1 review is considerably greater than the EPA criteria for both fresh water and salt water. Though the Tier 1 EEC is a "worst-case" preliminary evaluation of possible effects of the components of a proposed nontoxic shot type, the determination of the aquatic EEC suggested that evaluation of the release of copper from TBI shot and the resultant effects on aquatic biota is warranted.

To determine the actual release of copper from TBI shot, Tin Technology, Ltd. and ITRI Ltd. of the United Kingdom conducted 28-day *in vitro* tests of the shot in synthetic buffered waters with pHs of 5.6, 6.6, and 7.8 at 15 °C. Under normal pH conditions, TBI shot is very sparingly soluble, and the tests demonstrated that copper release from TBI shot is minimal. INC reported that "5 shot would be required in 1 liter quantities of moderately hard water to generate sufficient concentrations of dissolved copper to be detectable in the leaching tests." The concentrations in water for a single shot calculated at the end of 28-day leaching tests were 0.4136 mcg/L at pH 5.6, 0.1261 mcg/L at pH 6.6, and 0.0233 mcg/L at pH 7.8. These concentrations are the equivalent of background values.

From the copper concentrations under the three pH conditions, the risk to aquatic organisms due to use of TBI shot can be evaluated (50 CFR 20.134 (b)(2)(i)(D)(*2*)). The risk of the submitted shot material is determined by comparing the EEC to an appropriate toxicological level of concern—in this case, EPA LC50 values for the most sensitive aquatic organisms. *Ceriodaphnia reticulata* have the lowest average LC50 listed, 9.92 mcg/L. The ratio of the EEC to the LC50 for this species (using the EEC for pH 5.6) is (0.4136/9.92), or 0.042. Under the guidelines in (50 CFR 20.134 (b)(2)(i)(D)(*2*), a risk ratio quotient less than 0.1 indicates that detrimental effects on aquatic organisms are not likely. For TBI shot, even under acidic conditions, the risk ratio is only about 4 percent of the effect level. Thus, we conclude that negative effects from approval of TBI shot are very unlikely.

Impacts of Approval of TBI, TI, and TTB Shot Types as Nontoxic

The status quo would be maintained by not authorizing use of the three shot types for hunting waterfowl and coots. By regulation, steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel-iron, and tungsten-tin-iron-nickel are nontoxic shot types authorized for use by waterfowl and coot hunters. Because these shot types have been shown to be nontoxic to migratory birds, using only those shot types would have no adverse impact on waterfowl and their habitats.

Data provided to us and analyses of the likely effects of the three shot types on migratory birds indicate that these three shot types are nontoxic. We are concerned, however, because some nontoxic shot types are not widely used, and steel is unacceptable to a percentage of waterfowl hunters. Without alternative nontoxic shot types, hunters might not comply with the requirement for use of nontoxic shot when hunting waterfowl. The hunters who still consider steel an unacceptable alternative might continue to use lead, resulting in a small negative impact to the migratory bird resource. Use of lead shot would also negatively impact wetland habitats because of shot erosion and the ingestion of shot by aquatic animals.

Approving additional nontoxic shot types will likely result in a minor positive long-term impact on waterfowl and wetland habitats. Approval of TBI, TI, and TTB shot types as nontoxic would have a positive impact on the waterfowl resource.

The impact on endangered and threatened species of approval of the three shot types will be small but positive. We obtain a biological opinion pursuant to Section 7 of the Endangered Species Act prior to establishing the seasonal hunting regulations. The hunting regulations promulgated as a result of this consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species. We also will consult on effects on threatened and endangered species concurrent with the approval of the three shot types.

Our consultations do not address take resulting from noncompliance. Indeed, a factor considered when we developed the regulations banning the use of lead for migratory waterfowl hunting was the impact of lead on endangered and threatened species. Hunter failures to comply with the existing ban on lead are of concern to us. If additional alternatives to lead shot are not available, small amounts of lead shot may be added to the environment, causing a negative impact on endangered and threatened species. We believe noncompliance is of concern, but failure to approve the three shot types as nontoxic would have only a small negative impact on the resource.

The impact of approval of the three shot types on endangered and threatened species is similar to that described for waterfowl. In the short and long term, approval would provide a positive impact on endangered and threatened species by assuring that the three shot types have been found nontoxic. Also, as alternative shot types, they will further discourage the use of lead during waterfowl hunting and perhaps extend to upland game.

Approval of the three shot types as nontoxic would have a short-term positive impact on ecosystems. Some hunters still shooting lead shot may switch to one of the three shot types. Approval of them as nontoxic will result in positive long-term impact on ecosystems.

In the short and long term, a minor positive impact will result by approving the three shot types as an alternative to other approved nontoxic shot types. People who may have stopped hunting might be encouraged to participate again, and businesses could experience increased activity. Funding support for public programs will increase and product manufacturers will be able to target potential markets.

Cumulative Impacts

We foresee no negative cumulative impacts of approval of the three shot types for waterfowl hunting. Approval of an additional nontoxic shot type should help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of approval of the three shot types for waterfowl hunting should be positive both in the United States and elsewhere. Approval of additional nontoxic shot types should help to further reduce lead poisoning of waterfowl that migrate south of the United States for the winter and of animals that prey on them or consume their carcasses.

Nontoxic Shot Approval Process

The first condition for nontoxic shot approval is toxicity testing. Based on the data provided to us, we preliminarily conclude that none of the three shot types poses a significant danger to migratory birds, other wildlife, or their habitats. Based on the results of past toxicity tests, we conclude that the shots do not pose significant dangers to

migratory birds, other wildlife, or their habitats.

The second condition for approval is testing for residual lead levels. Any shot with a lead level of 1 percent or more will be illegal. We determined that the maximum environmentally-acceptable level of lead in shot is 1 percent, and incorporated this requirement in the nontoxic shot approval process we published in the **Federal Register** on December 1, 1997 (62 FR 63608). International Nontoxic Composites, Inc. has documented that TBI shot meets this requirement, ENVIRON-Metal, Inc. has documented that TI shot meets this requirement, and Victor Oltrogge has documented that TTB shot meets this requirement.

The third condition for approval involves enforcement. In 1995 (60 FR 43314), we stated that approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated in the nontoxic shot approval process. TBI and TI shotshells can be drawn to a magnet as a simple field detection method. TTB shotshells can be detected in the field by testers already in use for bismuth-tin, tungsten-matrix, and tungsten-polymer shot types.

For these reasons, and in accordance with 50 CFR 20.134, we intend to approve TBI, TI, and TTB shots as nontoxic for migratory bird hunting, and propose to amend 50 CFR 20.21(j) accordingly. This decision is based on data about the components of these shots, assessment of concentrations in aquatic settings, and assessment of the environmental effects of the shot. Those results indicate no likely deleterious effects of TBI, TI, or TTB shot to ecosystems or when ingested by waterfowl. Earlier testing of shot types containing tungsten and/or tin and/or iron indicated no environmental problems due to those metals in nontoxic shot. We do not believe the copper in TBI shot will pose any environmental hazard, and we propose to approve TBI shot with no further testing.

This proposed rule will amend 50 CFR 20.21(j) by approving TBI, TI, and TTB shot as nontoxic for migratory bird hunting. It is based on the toxicological reports, acute toxicity studies, and assessment of the environmental effects of the shot. Those results indicate no deleterious effects of any of the shot types to ecosystems or when ingested by animals.

Public Participation

Past proposed rules on approval of nontoxic shot have generated fewer than five comments. Furthermore, tungsten, iron, bismuth, and tin already have been reviewed extensively for use in nontoxic shot. Therefore, we will accept comments on this proposal until the closing date in the **DATES** section.

Please submit electronic comments as text files; do not use file compression or any special formatting. Comments will become part of the administrative record for the review of the application.

All comments on the proposed rule will be available for public inspection during normal business hours at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia 22203–1610. The complete file for this proposed rule is available, by appointment, during normal business hours at the same address. You may call (703) 358–1825 to make an appointment to view the files.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we have complied with NEPA in the following manner for the three shot applications:

For	NEPA compliance
TBI shot	a Draft Environmental Assessment (EA).
TI shot	a Draft Environmental Assessment (EA).
TTB shot	a Draft Environmental Assessment (EA).

These documents are available to the public at the location indicated in the **ADDRESSES** section.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat." We are completing a Section 7 consultation under the ESA for this proposed rule. The result of our consultation under Section 7 of the ESA will be available to the public at the location indicated in the **ADDRESSES** section.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule proposes to approve additional types of nontoxic shot that may be sold and used to hunt migratory birds; this proposed rule would provide shot types in addition to the types that are approved. We have determined, however, that this proposed rule will have no effect on small entities since the approved shots merely will supplement nontoxic shot types already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Small Business Regulatory Enforcement Fairness Act

Similarly, this policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866. This rule will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This proposed action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The action proposed is consistent with the policies and guidelines of other Department of the Interior bureaus. This proposed action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed action will not raise novel legal or policy issues because the Service has already approved several other nontoxic shot types.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain

technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Paperwork Reduction Act

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 information collection associated with this proposed rule (see 50 CFR 20.134) is already approved under OMB control number 1018–0067, which expires December 31, 2003. On October 22, 2003, we published in the **Federal Register** (68 FR 60409) a notice that we have submitted a request to OMB to renew the information collection associated with 50 CFR 20.134 for 3 years. OMB has not yet responded to our request.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally-protected property rights. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed rule will allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This proposed rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this proposed regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that this proposed rule has no effects on Federally recognized Indian tribes.

Energy Effects

In accordance with Executive Order 13211, this proposed rule, authorized by the Migratory Bird Treaty Act, does not significantly affect energy supply, distribution, and use. This proposed rule is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Section 20.21 is amended by revising paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) While possessing loose shot for muzzleloading or shotshells containing other than the following approved shot types:

Approved shot type	Composition by weight (in percentages)
bismuth-tin	97 bismuth, 3 tin
steel	iron and carbon
tungsten-bronze-iron	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron
tungsten-iron (2 types)	40 tungsten, 60 iron 22, tungsten, 78 iron
tungsten-matrix	95.9 tungsten, 4.1 polymer
tungsten-nickel-iron	50 tungsten, 35 nickel, 15 iron
tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11
tungsten-tin-bismuth	49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel

(2) Each approved shot type must contain less than 1 percent residual lead (see § 20.134). This lead restriction applies to the taking of ducks, geese (including brant), swans, coots *(Fulica americana)*, and any other species that make up aggregate bag limits with them during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

Dated: March 8, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–5782 Filed 3–12–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 50
Monday, March 15, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention(s) disclosed in U.S. Patent No. 5,122,188, "Vegetable oil-based printing ink", issued on June 16, 1992, Patent No. 5,713,990, "Vegetable oil-based offset printing inks", issued February 3, 1998, and Patent No. 6,583,302, "Chemically modified vegetable oil-based industrial fluid", issued June 24, 2003 are available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Agri-Lube, Inc. of Defiance, Ohio, an exclusive license to these inventions.

DATES: Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Agri-Lube, Inc. of Defiance, Ohio has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 04–5709 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–005N]

Codex Alimentarius Commission: 32nd Session of the Codex Committee on Food Labelling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture, and the Food And Drug Administration (FDA) of the Department of Health and Human Services, are sponsoring a public meeting on March 30, 2004 to provide information and receive public comments on agenda items that will be discussed at the 32nd Session of the Codex Committee on Food Labelling (CCFL) of the Codex Alimentarius Commission (Codex), which will be held in Montréal, Canada on May 10–14, 2004. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the agenda items that will be debated at this forthcoming Session of the CCFL.

DATES: The public meeting is scheduled for Tuesday, March 30, 2004, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107–A of the Department of Agriculture, Jamie Whitten Building, 1400 Independence Avenue, SW., Washington, DC. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference the Docket # 04–005N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ellen Matten, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, phone: (202) 205–7760, fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex Committee on Food Labeling (CCFL) drafts provisions on labeling applicable to all foods; considers, amends if necessary, and endorses specific provisions on labeling of draft standards, codes of practice, and guidelines prepared by other Codex committees; studies specific labeling problems assigned to it by the Commission; and studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions. The Committee is chaired by Canada.

Issues To Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the agenda.
2. Matters referred by the Codex Alimentarius Commission and other Codex Committees.
3. Consideration of labelling provisions in Draft Codex Standards.
4. Draft guidelines for the use of health and nutrition claims.
5. Guidelines for the production, processing, labelling and marketing of organically produced foods: proposed draft revised sections: Annex 2—Permitted Substances.
6. Labelling of foods and food ingredients obtained through certain techniques of genetic modification /genetic engineering:

(a) Draft recommendations for the labelling of foods obtained through certain techniques of genetic modification/genetic engineering (draft amendment to the General Standard for the Labelling of Prepackaged Foods): definitions.

(b) Proposed draft recommendations for the labelling of foods obtained through certain techniques of genetic modification/genetic engineering (proposed draft guidelines for the Labelling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification/Engineering): labelling provisions.

7. Proposed draft amendment to the General Standard for the Labelling of Prepackaged Foods: quantitative declaration of ingredients.
8. Consideration of country of origin labelling.
9. Consideration of food labelling and traceability.
10. Discussion paper on misleading claims.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Canadian Secretariat to the meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the March 30, 2004, public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the FSIS Docket Room (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 32nd Session of the CCFL, Docket # 04–005N.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice; FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at: *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on March 10, 2004.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 04–5815 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Export Sales Reporting program.

DATES: Comments should be submitted no later than May 14, 2004.

ADDITIONAL INFORMATION AND COMMENTS: Contact Tim Rocke, Export Sales Reporting, Program Manager, STOP 1025, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1025, telephone (202) 720–9209, e-mail *esr@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Export Sales Reporting Program.

OMB Number: 0551–0007.

Expiration Date of Approval: July 31, 2004.

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

Abstract: Section 602 of the Agricultural Trade Act of 1978, as amended, requires the reporting of information pertaining to contracts for export sale of certain specified agricultural commodities and other commodities that may be designated by the Secretary. In accordance with Sec. 602, individual weekly reports submitted shall remain confidential and shall be compiled and published in compilation form each week following the week of reporting. Any person who knowingly fails to make a report shall be fined not more than $25,000 or imprisoned for not more than 1 year, or both. Regulations at 7 CFR part 20 implement the reporting requirements, and prescribe a system for reporting information pertaining to contracts for export sales.

USDA's export sales reporting system has its roots in the unexpected purchase of large amounts of U.S. wheat and corn by the Soviet Union in 1972. To make sure that all parties involved in the production and export of U.S. grain have access to up-to-date export information, the U.S. Congress mandated an export sales reporting requirement in 1973. Prior to the establishment of the export reporting system, it was impossible for the public to obtain information on export sales activity until the actual shipments had taken place. This frequently resulted in considerable delay in the availability of information.

Under the export sales reporting system, U.S. exporters are required to report all large sales of certain designated commodities by 3 p.m. (eastern time) on the next business day after the sale is made. The designated commodities for these daily reports are wheat (by class), barley, corn, grain sorghum, oats, soybeans, soybean cake and meal, and soybean oil. Large sales for all reportable commodities except soybean oil are defined as 100,000 metric tons or more of one commodity in one day to a single destination or 200,000 tons or more of one commodity during the weekly reporting period.

Large sales for soybean oil are 20,000 tons and 40,000 tons, respectively.

Weekly reports are also required, regardless of the size of the sales transaction, for all of these commodities, as well as wheat products, rye, flaxseed, linseed oil, sunflowerseed oil, cotton (by staple length), cottonseed, cottonseed cake and meal, cottonseed oil, rice (by class) cattle hides and skins (cattle, calf, and kip), and beef. The reporting week for the export sales reporting system is Friday–Thursday. The Secretary of Agriculture has the authority to add other commodities to this list.

U.S. exporters provide information on the quantity of their sales transactions, the type and class of commodity, the marketing year of shipment, and the destination. They also report any changes in previously reported information, such as cancellation and changes in destinations.

The estimated total annual burden of 30,686 hours in the OMB inventory for the currently approved information collection will be increased by 504 hours to 31,190 hours. The estimated increase is based on the growth in the export market.

Estimate of burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated to be 33 minutes.

Respondents: All reports of wheat and wheat flour, feed grains, oil seeds, cotton, rice, cattle hides and skins, beef and any products thereof, and other commodities that the Secretary may designate as produced in the United States.

Estimated number of respondents: 380 for forms FAS 97, 98, 99, and 100.

Estimated Annual Number of Responses per Respondent: 152.

Requests for Comments: Send comments regarding (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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of the current information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at *chisleyk@fas.usda.gov*. Comments may be sent to Tim Rocke, Marketing Operations Staff/Export Sales Reporting, FAS, 1400 Independence Avenue, Stop 1025, SW., Washington, DC 20520–1025 or *esr@fas.usda.gov*, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means of communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Government Paperwork Elimination Act: FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Signed at Washington, DC, on February 27, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–5707 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on February 2, 2004, by a group of citrus producers in California.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.assistance@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increasing imports of clementines did not contribute importantly to the decline in domestic producer prices of navel oranges during the November 2002–May 2003 marketing year. The leading and prime factor contributing to the price decline according to an investigation conducted for the Administrator was increased domestic production.

Dated: March 4, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–5713 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Lewis and Clark County, MT; Copper Creek Road Improvements

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of an environmental impact statement.

SUMMARY: On December 13, 2002 the USDA Forest Service published in the **Federal Register** (67 FR 76714) a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Copper Creek Road Improvements project on the Lincoln Ranger District of the Helena National Forest. A proposed action associated with the December 13, 2002 NOI was scoped and preliminary environmental analysis was conducted in summer 2003. In August 2003, the existing condition of the Copper Creek drainage was substantially changed as the majority of the drainage burned in the 30,706 acre Snow Talon Fire. Due to the changed condition and funding limitations the decision has been made not to continue the environmental analysis process for the Copper Creek Road Improvements project. Therefore, an EIS will not be prepared, and the NOI is hereby canceled.

ADDRESSES AND FOR FURTHER INFORMATION: Questions about the cancellation of the NOI should be directed to Dan Seifert—Resource Planner, Lincoln Ranger District, 1569 Highway 200, Lincoln, MT 59639; phone number is (406) 362–4265; e-mail address is *dseifert@fs.fed.us*.

Dated: March 5, 2004.

Thomas J. Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 04–5737 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to revise and extend a currently approved information collection, the Milk and Milk Products Surveys.

DATES: Comments on this notice must be received by May 20, 2004 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Milk and Milk Products Surveys.

OMB Control Number: 0535–0020.

Expiration Date of Approval: September 30, 2004.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the nation. Data are gathered for milk production, dairy products, evaporated and condensed milk, manufactured dry milk, and manufactured whey products. Milk production and manufactured dairy products statistics are used by the U.S. Department of Agriculture to help administer programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 25,400.

Estimated Total Annual Burden on Respondents: 11,800 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency Clearance Officer, at (202) 720–5778.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency Clearance Officer, U.S. Department of Agriculture, Room 5336A South Building, 1400 Independence Avenue SW, Washington, D.C. 20250–2009 or *gmcbride@nass.usdd.gov.*

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

Signed at Washington, DC February 26, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–5710 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request approval to revise and extend a currently approved information collection, the Aquaculture Surveys.

DATES: Comments on this notice must be received by May 19, 2004 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Aquaculture Surveys.

OMB Control Number: 0535–0150.

Expiration Date of Approval: June 30, 2006.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production and prices. The Aquaculture Surveys collect information on trout and catfish inventory, acreage, and sales; catfish processed; and catfish feed. Survey results are used by government agencies in planning farm programs.

Twenty States are in the trout growers survey. In January, previous year trout sales data are collected from farmers and distributed fish data are collected from State and Federal hatcheries.

Thirteen States are in the catfish growers survey. Data are collected from farmers in January for January inventory, water area, and previous year sales. In addition, farmers in the four

major catfish producing States are surveyed in July for mid-year inventory. All twenty-six catfish processing plants across the nation are in the catfish processing survey. Plants are surveyed monthly for amount purchased, prices paid, amount sold, and prices received.

New to this collection is a survey of twenty catfish millers in four States. They are surveyed monthly for the amount of feed delivered for food-size fish and fingerlings. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms and mills.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Burden on Respondents: 900 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 26, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–5711 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention the National Agricultural Statistics Service (NASS) to request approval to revise and extend a currently approved information collection, the Agricultural Prices Surveys.

DATES: Comments on this notice must be received by May 19, 2004 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, Room 4117 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2001, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Prices.

OMB Control Number: 0535–0003.

Expiration Date of Approval: December 31, 2004.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production and prices. The Agricultural Prices surveys provide data on the prices received by farmers and prices paid by them for production goods and services. NASS estimates based on these surveys are used by agencies of the U.S. Department of Agriculture to prepare the economic accounts of the United States. These price estimates are also used to compute Parity Prices in accordance with requirements of the Agricultural Adjustment Act of 1938 as amended (Title III, Subtitle A, Section 301a). In addition, price data are used by the Federal Crop Insurance Corporation to help determine payment rates, program option levels, and disaster programs.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 minutes per response.

Respondents: Farmers and farm-related businesses.

Estimated Number of Respondents: 82,000.

Estimated Total Annual Burden on Respondents: 17,000 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5330B South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024 or *gmcbride@nass.usda.gov.* All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC February 26, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–5712 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Industrial Research and Development

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 14, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Julius Smith, Jr., Census Bureau, Room 2135, Building 4, Washington, DC 20233–6900, 301–763–4683 (or via the Internet at *julius.smith.jr@census.gov*) and Raymond M. Wolfe, National Science Foundation, 4201 Wilson Boulevard, Suite 965, Arlington, VA 22230, 703–292–7789 (or via the Internet at *rwolfe@nsf.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Survey of Industrial Research and Development (R&D), has been conducted annually since 1953. The information collection involves the estimation of the expenditures on research and development performed within the United States by industrial firms. Historically, the survey has been sponsored by the National Science Foundation (NSF), with the Census Bureau acting as the collection agent. Under a joint project agreement between NSF and the Census Bureau, the Census Bureau plans to assume sponsorship and submit the R&D Survey for OMB review as a new collection.

Industry accounts for over 70 percent of total U.S. R&D each year and since its inception, the survey has provided continuity of statistics on R&D expenditures by major industry groups and by source of funds. The survey is the industrial component of the NSF statistical program that seeks "* * * to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal government," as mandated in the National Science Foundation Act of 1950. Statistics from the survey will be released by the Census Bureau and published in NSF's annual publication series Research and Development in Industry. The proposed collection will continue the survey for three years.

II. Method of Collection

The survey will be mailed to a statistical sample of approximately 31,100 companies to collect information on the amount and sources of funds for and character of R&D performed and contracted out by industrial firms, and information on sales and employment of the firms themselves.

III. Data

OMB Number: 3145–0027 (NSF).
Form Number: RD–1 (long form); RD–1A (abbreviated form).
Type of Review: Regular review.
Affected Public: Business or other for-profit.

Estimated Number of Respondents	RD–1	2,600
	RD–1A	28,500
Total		31,100

Estimated Time Per Response: RD–1—18 hours; RD–1A—1 hour.
Estimated Total Annual Burden Hours: 75,300.
Estimated Total Annual Cost: The estimated cost to the respondents is $1,235,673.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–5734 Filed 3–12–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Safe Harbor Guidance

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 14, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, BIS ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6622, 14th & Constitution Ave., NW., room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is needed to enable the Department to confirm whether an exporter has resolved red flags surrounding their export transaction, thus qualifying for a safe harbor and avoiding prosecution. The information report is not mandatory. Exporters can qualify for this safe harbor on their own by taking certain steps outlined in the Export Administration Regulations. It is hoped that by offering exporters this option, it will provide additional

security to exporters in those cases where they want confirmation that the Department agrees that all red flags have been resolved.

II. Method of Collection

Written submission.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: New collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 1 to 4 hours per response.

Estimated Total Annual Burden Hours: 160 hours.

Estimated Total Annual Cost: $8,200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–5733 Filed 3–12–04; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–822]

Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, in Part.

SUMMARY: On November 7, 2003, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments and information received, we have made changes to the dumping margin calculations for the final results. We find that certain helical spring lock washers from the People's Republic of China were being sold in the United States below normal value by Hangzhou Spring Washer Co., Ltd. during the period October 1, 2001 through September 30, 2002. We have also determined not to revoke the antidumping duty order on the subject merchandise with respect to this company.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2613.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2003, the Department published in the **Federal Register** the preliminary results of its administrative review of certain helical spring lock washers ("HSLWs") from the People's Republic of China ("PRC") and its preliminary determination not to revoke the antidumping duty order, in part (*Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 63060 (November 7, 2003) ("*Preliminary Results*"). We received surrogate value information from the sole respondent, Hangzhou Spring Washer Co., Ltd. ("Hangzhou"), on December 16, 2003. On January 5, 2004, the petitioner, Shakeproof Assembly Components Division of Illinois Tool Works, Inc. ("Shakeproof"), and Hangzhou submitted case briefs. On January 12, 2004, the petitioner and Hangzhou submitted rebuttal briefs.

The Department has completed the antidumping duty administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

The period of review ("POR") is October 1, 2001, through September 30, 2002. This is the ninth administrative review of the order.

Price Comparisons

We calculated export price and normal value based on the same methodology used in the Preliminary Results with the following exceptions: For the steel wire rod and steel scrap surrogate values, we included the Indian import statistics for France. For selling, general and administrative ("SG&A") expenses, the total cost of production ("TCOP"), and total labor, we corrected programming errors. The corrected margin program deducts steel scrap revenue from SG&A expenses and TCOP, and we have excluded plating labor from the total labor calculation. Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import

Administration on its website. The Department updated the wage rate for the PRC after the *Preliminary Results* and, therefore, we are using the revised wage rate of $0.90/hour to value labor. *See* the "Final Results Calculation Memorandum for Hangzhou Spring Washer Co., Ltd.," dated March 8, 2004, for further discussion.

Revocation

Pursuant to 19 CFR 351.222(e)(1), Hangzhou requested revocation of the antidumping duty order as it pertains to that company. Based on our analysis of the sales and factors of production information submitted by Hangzhou, we find that Hangzhou sold the subject merchandise in the United States below normal value during the POR. Thus, we do not find that Hangzhou has not sold the subject merchandise below NV for a period of at least three consecutive years. Therefore, pursuant to 19 CFR 351.222(b)(1), we find that Hangzhou does not qualify for revocation of the order on HSLWs from the PRC and that the order, with respect to Hangzhou, should not be revoked.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary, Import Administration, dated March 8, 2004 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, located in Room B-099 of the main Department building ("CRU"). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading "China PRC." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

The weighted-average dumping margin for the POR is as follows:

Manufacturer/exporter	Time Period	Margin (percent)
Hangzhou Spring Washer Co., Ltd.	10/01/2001–09/30/2002	28.59

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than de minimis, we will direct the U.S. Customs and Border Protection ("CBP") to apply the *ad valorem* assessment rates against the entered value of each of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate shown above; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the rate will be the PRC country-wide rate of 128.63 percent, which is the "All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates 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) 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 orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections section 751(a) and 777(i) of the Act.

Dated: March 8, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

List of Issues in the Decision Memorandum

Comment 1. Rejection of Market Economy Steel Wire Rod Prices

[FR Doc. 04–5800 Filed 3–12–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of partial rescission of antidumping duty administrative review.

SUMMARY: On January 22, 2004, the Department of Commerce (the Department) published in the **Federal Register** (69 FR 3117) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from Argentina. The period of review (POR) is December 1, 2002, to November 30, 2003. This review has now been partially rescinded for certain companies because the requesting parties withdrew their requests.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Sheba or Donna Kinsella, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0145 and (202) 482–0194, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (Customs) purposes, the Department's written description of the merchandise under this order is dispositive.

Background

On December 31, 2003, the American Honey Producers Association and the Sioux Honey Association (collectively "petitioners") requested an administrative review of the antidumping duty order on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register**. *See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001). The petitioners requested the Department conduct an administrative review of entries of subject merchandise made by 13 Argentine producers/exporters. In addition, the Department received requests for reviews from 6 of the Argentine exporters included in the petitioners' request. Prior to the Department's initiation of review, on January 15, 2004, petitioners filed a withdrawal of request for review of the following four companies: ConAgra Argentina S.A., Establecimiento Don Angel S.r.L., Food Way S.A., and Mielar, S.A. The Department subsequently initiated a review on the remaining 9 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 3117 (January 22, 2004).

On February 18, 2004, petitioners submitted a withdrawal of request for review of Compania Europea Americana, S.A. and Radix S.r.L. *See* Letter from petitioners to the Department, *Partial Withdrawal of Request for Second Administrative Review of the Antidumping Duty Order on Honey From Argentina*, dated February 18, 2004, which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce Department Building.

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The petitioners made a request for withdrawal within the 90–day deadline, in accordance with 19 CFR 351.213(d)(1). Because the petitioners were the only party to request the administrative review of the above listed companies, we have accepted the withdrawal request. Therefore, for Compania Europea Americana, S.A. and Radix S.r.L., we are rescinding this review of the antidumping duty order on honey from Argentina covering the period December 1, 2002, through November 30, 2003.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: March 5, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5797 Filed 3–12–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to requests from the following entities: Dongguan Fay Candle Co., Ltd. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (d/b/a DIJIT Inc.) (TIJID), and Palm Beach Home Accents, Inc. (Palm Beach); Qingdao Kingking Applied Chemistry Co., Ltd. (Kingking); and the Petitioner, the National Candle Association (NCA). The review covers the period August 1, 2001 through July 31, 2002.

We determine that sales have been made below normal value (NV). The final results are listed below in the section titled "Final Results of Review." We will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on imports into the United States of subject merchandise exported by the respondents.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Sally Gannon at (202) 482–0162 or Mark Hoadley at (202) 482–3148, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2003, the Department issued the preliminary results of its administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China in the **Federal Register**, 68 FR 53109 (September 9, 2003) (*Preliminary Results*). On August 26, 2003, prior to the *Preliminary Results*, we received a letter from the Petitioner describing Fay Candle's involvement as a petitioning creditor in an involuntary bankruptcy proceeding brought against TIJID in the United States Bankruptcy Court for the Southern District of Florida. On August 29, 2003, we received comments from Fay Candle, TIJID, and Palm Beach on the above-referenced bankruptcy proceeding. Both of these submissions were received too late for the Department to examine them for purposes of the *Preliminary Results*. On September 8, 2003, we received rebuttal comments from the Petitioner on the bankruptcy proceeding. On September 16, 2003, the Department issued a memorandum to the file notifying interested parties that it was postponing the October 9, 2003 case brief and October 14, 2003 rebuttal brief deadlines until further notice. On September 29, 2003, we received comments on surrogate value data from Fay Candle. On September 30, 2003, the Department issued a fourth supplemental questionnaire to Fay Candle.

On October 3, 2003, we received a request for a public hearing from Li & Fung (Trading) Ltd. (Li & Fung). On October 7, 2003, the Petitioner requested a public hearing to address the dumping margin for Kingking. On October 8, 2003, we received comments from the Petitioner regarding discrepancies between the U.S. sales quantity and value totals which Kingking reported to the Department and CBP data. On October 8, 2003, we received a request from Fay Candle to extend the time to respond to the Department's fourth supplemental questionnaire. On October 9, 2003, we received rebuttal comments from the Petitioner on the surrogate value data previously submitted by Fay Candle. On October 9, 2003, Fay Candle requested a hearing in this matter to address the issues from the *Preliminary Results*. On October 9, 2003, J.C. Penney Purchasing Corporation and Wal-Mart Stores, Inc. (Wal-Mart), importers of the subject merchandise, submitted a letter raising objections to aspects of the Department's *Preliminary Results*.

On October 9, 2003, we received a letter from Fay Candle requesting that the Department postpone verification of Fay Candle scheduled to start on October 20, 2003 in the PRC. On October 10, 2003, the Department extended the time for Fay Candle to respond to the Department's fourth supplemental questionnaire to October 15, 2003. In a letter dated October 10, 2003, we asked Fay Candle to explain why it requested a postponement of the verification scheduled to begin October 20, 2003 in the PRC. On October 10, 2003, we received comments from the Petitioner regarding the involuntary bankruptcy petition for TIJID and a related civil suit by TIJID against Wal-Mart. On October 10, 2003, we received comments from the Petitioner regarding the Department's factors of production verification of Fay Candle. On October 15, 2003, the Department issued a verification outline to Fay Candle for the PRC verification. On October 15, 2003, we received a request from Fay Candle for a second extension of the deadline to respond to the Department's fourth supplemental questionnaire. On October 16, 2003, the Department issued a memorandum to the file offering to postpone the PRC verification scheduled to start on October 20, 2003 and proposing to conduct the PRC verification starting October 27, 2003. On October 16, 2003, the Department issued a second memorandum to the file noting that Fay Candle had accepted the Department's offer to postpone the PRC verification scheduled to begin on October 20, 2003 and had agreed to starting the PRC verification on October 27, 2003.

On October 16, 2003, the Department issued a memorandum to the file notifying the parties that it was accepting the submissions from the Petitioner and Fay Candle, respectively, regarding the involuntary bankruptcy petition of TIJID. On October 16, 2003, the Department issued a memorandum to the file granting Fay Candle an extension of time to respond to the Department's fourth supplemental questionnaire. On October 20, 2003, we received another request from Fay Candle to postpone the PRC verification, which had been rescheduled to begin on October 27, 2003. In its letter, Fay Candle proposed that the Department commence the verification of the U.S. importers on November 10, 2003 and commence verification of Fay Candle in the PRC on November 17, 2003. On October 20, 2003, we received Fay Candle's response to the Department's fourth supplemental questionnaire. On October 20, 2003, the Department issued a memorandum to the file noting that Fay Candle no longer consented to the PRC verification of Fay Candle starting on October 27, 2003. On October 24, 2003, the Department received comments from the Petitioner objecting to further delays in the verification of Fay Candle. On October 24, 2003, the Department issued a memorandum to the file outlining a briefing schedule for the interested parties, the Petitioner, and Respondents.

On October 28, 2003, the Department received a letter from Fay Candle withdrawing its request for an administrative review; however, the review could not be rescinded because the Petitioner had also requested a review of Fay Candle. On October 29, 2003, the Department issued a verification outline to Fay Candle for the Florida verification. On October 29, 2003, the Department issued a memorandum to the file notifying the parties that the Department had previously accepted the Petitioner's submissions dated August 26, 2003 and September 8, 2003 regarding the involuntary bankruptcy petition against TIJID, and notifying Fay Candle that if it intended to submit rebuttal information regarding the involuntary bankruptcy petition, then Fay Candle would need to request an extension of time for any such submissions. On October 30, 2003, the Department received comments from the Petitioner objecting to Fay Candle's request to withdraw from this administrative review. On November 4, 2003, we received comments from Fay Candle clarifying that it did not request withdrawal from this administrative review in its letter dated October 28, 2003. According to Fay Candle, it requested the Department to exercise its discretion to extend the time limit for Fay Candle to withdraw its August 30, 2002 request for review so that the Department could then rescind the review with respect to Fay Candle.

The Department conducted verification of Fay Candle at the office of its U.S. importers, TIJID and Palm Beach, on November 6, 2003 and November 7, 2003. On November 13, 2003, we received case briefs from the Petitioner and Fay Candle. On November 18, 2003, we received rebuttal briefs from Fay Candle, Li & Fung, American Greetings Company,

and Petitioner. The Department conducted verification of Fay Candle overseas from November 17, 2003 to November 21, 2003. On December 24, 2003, the Department issued its verification reports. On January 6, 2003, we received a letter from the Petitioner regarding a safety recall of candles made by Kingking and sold in the United States by Wal-Mart. On January 7, 2004, the Department issued a memorandum to the file notifying the parties that comments on the Department's verification reports for Fay Candle would be due by January 16, 2004 and rebuttal comments would be due on January 23, 2003.

On January 9, 2004, we received a request from the Petitioner to withdraw its request for a public hearing on the issue of Kingking's dumping margin. On January 16, 2004, the Department received comments from the Petitioner and Fay Candle on the verification reports. On January 22, 2004, the Department issued a memorandum to the file notifying the parties that it would hold a public hearing on February 6, 2004, regarding the issue of the status of Li & Fung. On January 23, 2004, the Department received rebuttal comments on the verification reports from the Petitioner and from Fay Candle. On February 3, 2004, the Department postponed the hearing scheduled for February 6, 2004. On February 13, 2004, Fay Candle withdrew its request for a hearing in this matter. On February 13, 2004, the Department re-scheduled the hearing on the issue of Li & Fung's status for February 20, 2004, and notified parties that we were setting up a special briefing schedule for comment solely on Li & Fung's status. On February 17, 2004, the Department received special case briefs from Li & Fung and the Petitioner. On February 19, 2004, the Department received special rebuttal briefs from Li & Fung and the Petitioner. On February 20, 2004, a hearing was held in this proceeding on the status of Li & Fung. We have now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Antidumping Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States, Annotated for Statistical Reporting Purposes (2004) (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Period of Review

The period of review (POR) is August 1, 2001 through July 31, 2002.

Verification

Pursuant to section 782(i) of the Act, the Department verified the information submitted by Fay Candle for use in our final results. The Department used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. *See PRC Verification Report* and *U.S. Verification Report.*

Analysis of Comments Received

The issues raised in all the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration to James J. Jochum, Assistant Secretary for Import Administration regarding the Final Results of Antidumping Duty Administrative Review of Petroleum Wax Candles from the People's Republic of China*, dated March 8, 2004 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum*, is attached to this notice as Attachment I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision 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.

Final Rescission, in Part, of Administrative Review

Pursuant to our regulations, the Department may rescind an administrative review if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. *See* 19 CFR 351.213(d)(3). In our *Preliminary Results*, the Department preliminarily rescinded this review with respect to four companies that reported no shipments during the POR: Dalian Hanbo Lighting Co., Ltd. (Dalian Hanbo); Premier Candle Co., Ltd. (Premier Candle); Zhong Hang-Scanwell International (ZHS); Zen Continental Co., Inc. *See Memorandum from Javier Barrientos through Sally Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China: Preliminary Intent to Rescind Antidumping Duty Administrative Review, in Part (POR: August 1, 2001 to July 31, 2002)*, dated September 2, 2003 (*Intent to Rescind Memo*). In the *Preliminary Results*, we stated that we found no evidence that there were entries, exports, or sales of the subject merchandise by these companies. Since the *Preliminary Results*, no new information has been obtained or submitted which would alter our decision to rescind the review with respect to these four companies. Therefore, for these final results and in accordance with 19 CFR 351.213(d)(3), the Department is finally rescinding, in part, this review with respect to Dalian Hanbo, Premier Candle, ZHS, and Zen Continental.

With respect to a fifth company, Li & Fung, which claimed it was merely a buying agent for the subject merchandise during the POR and not an exporter or producer, the Department found in the *Preliminary Results* that its review of the CBP data for the POR did not support Li & Fung's claim that it acted only as a buying agent during the POR. *See Preliminary Results* and *Intent to Rescind Memo*. Since the *Preliminary Results*, Li & Fung and the Petitioner submitted special case and rebuttal briefs on this issue and a public and closed hearing was held regarding the status of Li & Fung in this administrative review.

The Department finds for these final results that Li & Fung has not demonstrated that the data which the Department obtained from CBP is incorrect and that the Department should, thus, rescind this review, in part, with respect to Li & Fung. As noted above, in the *Preliminary Results* the Department determined that Li & Fung's claim that it had no shipments had not been substantiated, based on data obtained from CBP for the POR. *See Preliminary Results*. As such, Li & Fung bears the burden of demonstrating to the Department that the CBP data is incorrect or has been misinterpreted. While Li & Fung has provided an explanation in its briefs and some

evidence in its February 6, 2003 submission which supports its claim that it has served as a buying agent, it provided no evidence that directly rebutted the information obtained from CBP. The Department's task in this administrative review is to determine whether or not Li & Fung has provided sufficient relevant evidence that it did not sell or export subject merchandise during this POR such that the review should be rescinded, in part, with respect to Li & Fung. In this respect, Li & Fung has failed to present relevant evidence to refute our decision in the *Preliminary Results*. For a more detailed analysis of this issue, *see Decision Memorandum* at Comment 3; *see also Memorandum to Barbara E. Tillman, through Sally C. Gannon, from Javier Barrientos; Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Status of Li & Fung (Trading) Ltd., for the Final Results*, dated March 8, 2004 (*Li & Fung Final Memo*). Therefore, for the final results, because Li & Fung has not demonstrated that it did not sell or export the subject merchandise during the POR, the Department has not rescinded this review, in part, with respect to Li & Fung. *See Decision Memorandum*, at *Comment 3*.

Separate Rates

Fay Candle, Kingking, Shandong Jiaye General Merchandise Co., Ltd. (Shandong Jiaye) , and Shanghai Charming Wax Co., Ltd. (Shanghai Charming) all requested a separate, company-specific rate.[1] In the Department's *Preliminary Results*, because evidence on the record indicated an absence of government control, both in law and in fact, over Fay Candle's, Kingking's, Shandong Jiaye's, and Shanghai Charming's export activities, we preliminarily determined that these companies met the requirements for receiving a separate rate for purposes of this review. There have been no changes to the record information since the *Preliminary Results* with regard to separate rates for Fay Candle, Shandong Jiaye, and Shanghai Charming. Therefore, for these final results, we continue to determine that these three companies will receive separate rates.[2]

With regard to Kingking, however, as detailed in the "Application of Adverse Facts Available" section below, it failed to continue to participate in this review after the *Preliminary Results* were issued and, thus, did not cooperate to the best of its ability for these final results. As a result, the Department will apply an AFA rate to Kingking.

Application of Adverse Facts Available

In the *Preliminary Results*, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department applied total AFA to the PRC entity, which included four mandatory respondents, the 88 companies that failed to respond to the Department's Q&V letter, and five other entities that did not demonstrate their eligibility for a separate rate. See Attachment II for a listing of these 97 companies.[3] In the *Preliminary Results*, we determined that none of the 97 entities were eligible for a separate rate because they failed to cooperate with the Department to the best of their ability. We noted in the *Preliminary Results* that some of the companies failed to respond to the Department's Q&V letter, while others failed to respond in whole or in part to the Department's questionnaire. Because none of these companies demonstrated that they were eligible for a separate rate, the Department considered them part of the PRC entity.

Since the *Preliminary Results*, the Department has not received any information on the record of this matter that would cause us to alter our decision in the *Preliminary Results* regarding the application of AFA to the PRC entity. Therefore, for the reasons cited in the *Preliminary Results* and in the *Decision Memorandum*, at *Comment 2*, the Department will continue to apply the AFA rate to the PRC entity which, as noted above, includes the 97 entities identified in Attachment II.

As noted *supra* at footnote 3, the Department has determined for these final results that Kingking is no longer eligible for a separate rate because it failed to continue to cooperate to the best of its ability after the *Preliminary Results*. As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Kingking. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required.

On September 11, 2003, the Department sent Kingking a letter asking Kingking to reconcile its reported quantity and value information with data from CBP. On September 23, 2003, the Department sent Kingking another letter requesting public summaries of its business proprietary information on the record. The Department attempted several times to solicit responses to the Department's two letters from Kingking, without success. *See Memorandum to File from Sally C, Gannon: Qingdao Kingking Chronology* (with electronic mail (e-mail) attachments) dated October 14, 2003. These included: an October 3, 2003 e-mail; an October 6, 2003 facsimile; an October 7, 2003 e-mail; and, an October 9, 2003 e-mail. The only response the Department received in reference to its letters was an October 8, 2003 e-mail from a Kingking company official stating that Kingking did not respond to the Department's previous requests. *Id.* In addition, Kingking did not request further time or assistance in fulfilling its obligation in this regard and stopped participating in the administrative review. *Id.* Kingking failed to provide information explicitly requested by the Department; therefore, we must resort to use of facts otherwise available. Because Kingking stopped responding to the Department, section 782 (d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, and not providing any explanation, Kingking failed to

[1] As noted in the *Preliminary Results*, although Smartcord, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to the remainder of the Department's questionnaire. As a mandatory respondent, Smartcord was required to provide complete questionnaire responses. Therefore, as indicated in the "Application of Adverse Facts Available" section *infra*, Adverse Facts Available (AFA) was assigned to Smartcord in the *Preliminary Results* and in these final results. As a result, Smartcord will not receive a separate rate for these final results.

[2] As in the *Preliminary Results*, for Shandong Jiaye and Shanghai Charming, we have calculated a weighted-average margin for these final results based on the rates calculated for those producers/exporters that were selected as mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997). Because Fay Candle's rate is the only qualifying rate for this calculation, we applied Fay Candle's rate to Shandong Jiaye and Shanghai Charming for these final results.

[3] As noted above, and discussed *infra*, Kingking is no longer eligible for a separate rate. Therefore, its name has been added to the companies that will receive the AFA rate in these final results. Accordingly, the number of such companies will increase by one to 98.

cooperate to the best of its ability. The information requested by the Department is integral to its antidumping analysis. In addition, because Kingking never responded to the Department's supplemental questionnaires and stopped participating in the review, the Department could no longer rely on any information in its original questionnaire responses to determine whether Kingking was entitled to a separate rate. Without complete questionnaire responses, the Department cannot calculate normal value, and, therefore, a dumping margin. Kingking is the only party which has access to the information requested by the Department and therefore is the only party which could have complied with the Department's supplemental requests for information.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, because of the breadth of the missing, unsupported and unverifiable data, we are applying total adverse facts available to Kingking. As AFA, and as the PRC-wide rate, the Department is assigning Fay Candle's calculated rate from the instant review, which is the highest rate determined in the current or any previous segment of this proceeding.

We are also applying Fay Candle's rate to the 97 companies listed in Attachment II. Corroboration is not required because this rate is based on, and calculated from, information obtained in the course of this administrative review, *i.e.*, it is not secondary information. See 19 CFR 351.308(c) and (d) and section 776(c) of the Act.

Affiliation

The Department continues to find that Fay Candle and its U.S. importers are unaffiliated. Thus, we continue to treat Fay Candle's sales as EP sales for these final results. For a full discussion of this issue, see *Decision Memorandum* at *Comment 1*.

Surrogate Value Changes Since the Preliminary Results

We received comments from Fay Candle and the Petitioner on the surrogate values for numerous factors of production used by the Department to calculate the dumping margin for Fay Candle in the *Preliminary Results*. As a result of the comments made by the parties, we have changed the HTS classifications, updated the data, and corrected ministerial errors for a number of factors of production. Below is a listing of the factors of production for which we received comments and a brief description of the decisions reached by the Department. For an in-depth discussion of Fay Candle's and the Petitioner's comments and the Department's decisions, see the *Memorandum from Sebastian Wright and Mark Hoadley through Sally Gannon to the File Regarding Determination of Surrogate Values for Use in the Final Results of the Administrative Review of Petroleum Wax Candles from the People's Republic of China*, dated March 8, 2004; *see also Decision Memorandum*, at *Comment 4*.

Paraffin Wax: The Department has determined to use the data set from *Chemical Weekly* which does not include the data for imports from the PRC to obtain a surrogate value for paraffin wax.

Banding Strap: The Department has decided to classify banding strap under HTS heading 3920.2000, "other plates, sheets film, foil an strip of plastics * * * of polymers of propylene."

Metal Plate, Metal Star, and Metal Stand: The Department has classified these three inputs under HTS heading 8007.0010, "{o}ther articles of tin: articles not elsewhere specified or included of a type used for household, table or kitchen use; toilet and sanitary wares; all the foregoing not coated or plated with precious metal."

Masonite Board: The Department has classified Masonite board under HTS heading 4411.0000, "fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances."

Styrofoam: The Department has classified Styrofoam under HTS heading 3903.1100, "{p}olymers of styrene in primary forms: Expandable."

Wicks: The Department has classified wicks under HTS heading 5908.0000, "{t}extile wicks, woven, plaited or knitted, for lamps, stoves, lighters, candles or the like; incandescent gas mantles and tubular knitted gas mantle fabric therefore, whether or not impregnated."

Color Boxes: The Department has classified color boxes under HTS heading 4819.2000, "{o}ther folding cartons, boxes and cases of non-corrugated paper or paperboard."

PDQs and Sidekick Displays: The Department has classified PDQs and sidekick displays under HTS heading 4819.1000, "cartons, boxes and cases of corrugated paper or paperboard."

Cardboard and Mastercase: The Department has classified cardboard and mastercase under HTS heading 4819.1000, "cartons, boxes and cases of corrugated paper or paperboard."

Polyresin Plate: The Department will continue to exclude "aberrational" data from the Indian import statistics used in our calculations for this input.

Scrap Wax: In accordance with the *Preliminary Results*, the Department will continue to use the scrap wax sold during the POR in order to calculate the adjustment to NV. However, the Department will limit the adjustment to NV to the amount of scrap wax generated from production of subject merchandise during the POR. We also decline to use the *Chemical Weekly* data for residue wax as the surrogate value for scrap wax.

Scrap Silicone: The Department has determined not to permit an adjustment to NV for the sale of scrap silicone because the Department considers silicone a part of overhead.

Scrap Packing: The Department has determined to average all of the values for Fay Candle's packing material inputs, except for wood pallets, together to calculate a surrogate value for scrap packing material.

Electricity: The Department has updated the data from International Energy Agency's (IEA's) *Energy Prices and Taxes* as the source for the surrogate value for this input. The Department has also decided to use the electricity industry-specific inflator to adjust the surrogate value to account for inflation through the POR.

Inland Freight Distance for Paraffin Wax: In accordance with the *Sigma* rule, the Department has determined not to cap the inland freight distance for paraffin wax. The Department has determined that the data for this input does not include import statistics and therefore should not be capped.

Truck Freight Rate: The Department has decided to use the truck freight rate data from *Chemical Weekly* because this data provides a more accurate surrogate value than the data from *Financial Express* used in the *Preliminary Results*.

VYBAR103 Additive: The Department has corrected the ministerial error in the calculation of the surrogate value for this input.

Exchange Rate: The Department has corrected the ministerial error in the calculation of the average Indian exchange rate.

Packing Overhead Cost: The Department has decided not to calculate an adjustment to NV for packing overhead cost.

Coal: The Department has determined to continue to use Indian import statistics to calculate a surrogate value for coal.

Labor Rate: The Department has used updated data from the Department's Web site to calculate a surrogate value for the PRC labor rate. *See* Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003 and updated in February 2004, *http://www.ia.ita.doc.gov/wages/01wages/01wages.html.*

Final Results of Review

We determine that the following percentage margins exist for the period August 1, 2001 through July 31, 2002.

Manufacturer/Exporter	Margin (percent)
Dongguan Fay Candle Co., Ltd.	95.95
Shanghai Charming Wax Co., Ltd.	95.95
Shandong Jiaye General Merchandise Co., Ltd.	95.95
PRC–Wide Rate[4]	95.95

The Department will disclose calculations performed in connection with these final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. For Fay Candle, we will direct CBP to assess the resulting assessment rates, where appropriate, on the entered CBP quantity for the subject merchandise for each of the importer's entries during the period of review. For all other entries, we will direct CBP to assess the resulting assessment rates against the entered CBP values for the subject merchandise on each of the exporter's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Fay Candle, Shanghai Charming, and Shandong Jiaye will be the rates listed above in the "Final Results of Review" section *supra*; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the new PRC-wide rate, as listed above in the "Final Results of Review" section *supra*; and, (4) for all other non-PRC exporters, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 8, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Attachment I—Comments

1. Affiliation
2. Application of Adverse Facts Available
3. Status of Li & Fung (Trading) Ltd., (Li & Fung)
4. Paraffin Wax
5. Other Factors of Production

Attachment II

Companies Listed in the *Initiation Notice* and the *Preliminary Results* notice that are Subject to the PRC-Wide Rate (97 Companies):

ADP (Ningbo, PRC)
ADP Shanghai
Allock Ltd.
Amstar Business Company Limited
Anyway International Trading & Manufacturing Co., Ltd.
Aroma Consumer Products (Hangzhou) Co., Ltd.
Candle World Industrial Co.
China Hebei Boye Great Nation Candle Co., Ltd.
China Overseas Trading Dalian Corp.
China Packaging Import & Export Liaoning Co.
China Xinxing Zhongyuan (Wuhan) Imp. & Exp.
CNACC (Zhejiang) Imports & Export Co., Ltd.
Cnart China Gifts Import & Export Corp.
Dandong Hengtong Handicraft Article Co., Ltd.
Dandong Hengtong Handicraftarticle Co., Ltd.
DDP Qingdao
Dongijeng Fecund Imp. & Exp. Co. Ltd.
Ever-gain Industrial Co.
Excel Network Limited
Far Going Candle Gifts Co., Ltd.
Fu Kit
Fujian Provincial Arts & Crafts Imp. & Exp. Corp.
Fushun Candle Corporation
Fushun Economy Development Zone Xinyang Candle Factory
Fushun Huaiyuan Wax Products Co., Ltd.
Fushun Yuanhang Paraffin Products Industrial Company
Fushun Yuhua Crafts Factory
Gansu Textiles Imp. & Exp. Corp.
Green Islands Industry Shanghai Co. Ltd.
Huangyan Imp. & Exp. Corp.
Huangyan Imp. & Exp. Corp.
Jason Craft Corp.
Jiangsu Holly Corporation
Jiangsu Yixing Foreign Trade Corp.
Jilin Province Arts and Crafts
Jintan Foreign Trade Corp.
Kingking A.C. Co., Ltd.
Kuehne & Nagel (Hong Kong) Beijing
Kwung's International Trade Co., Ltd.
Li & Fung Trading Ltd.
Liaoning Arts & Crafts Import & Export
Liaoning Light
Liaoning Light Industrial Products Import & Export Corp.
Liaoning Native Product Import & Export Corporation, Ltd.
Liaoning Province Building Materials Industrial Im
Liaoning Xinyuan Textiles Import and Export
Lu Ke Trading Co., Ltd.
Ningbo Free Trade Zone Weicheng Trading Co., Ltd.
Ningbo Free Zone Top Rank Trading Co.
Ningbo Kwung's Giftware Co., Ltd.
Ningbo Kwung's Import & Export Co.
Ningbo Sincere Designers & Manufacturers Ltd.
Qingdao Allite Radiance Candle Co., Ltd.
Qingdao Happy Chemical Products Co., Ltd.
Quanzhou Wenbao Light Industry Co.
Red Sun Arts Manufacture (Yixing) Co., Ltd.

[4] This PRC-wide rate will apply, as discussed above, to all 97 companies listed in Attachment II and to Kingking, as well as to all other companies that do not have a separate rate.

Rich Talent Trading Ltd./Smartcord Int'l Co. Ltd.
Round-the-World (USA) Corp.
Round-the-World International Trade & Trans. Service (Tianjin) Co., Ltd.
Seven Seas Candle Ltd.
Shandong H&T Corp.
Shandong Native Produce International Trading Co., Ltd.
Shanghai Arts and Crafts Company
Shanghai Asian Development Int'l Tr
Shanghai Broad Trading Co. Ltd.
Shanghai Gift & Travel Products Import & Export Corp.
Shanghai Gifts & Travel
Shanghai Jerry Candle Co., Ltd.
Shanghai New Star Im/Ex Co., Ltd.
Shanghai Ornate Candle Art Co., Ltd.
Shanghai Shen Hong Corp.
Shanghai Sincere Gifts Designers & Manufacturers, Ltd.
Shanghai Success Arts & Crafts Factory
Shanghai Xietong Group O/B Asia 2 Trading Company
Shanghai Zhen Hua c/o Shanghai Light Industrial Int'l Corp., Ltd.
Silkroad Gifts
Simon Int'l Ltd.
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (No. 339 East Baodai Road, Suzhou)
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou)
T.H.I.. (HK) Ltd.
Taizhou Int'l Trade Corp.
Taizhou Sungod Gifts Co., Ltd.
THI (HK) Ltd.
Thi Group Ltd. and THI (HK) Ltd.
Tianjin Native Produce Import & Export Group Corp., Ltd.
Tonglu Tiandi
Universal Candle Co., Ltd.
Weltach
World Way International (Xiamen)
World-Green (Shangdong) Corp., Ltd.
Xiamen Aider Import & Export Company
Xiamen C&D Inc.
Xietong (Group) Co., Ltd.
Zhejiang Native Produce & Animal By-Products Import & Export Corp.
Zhong Nam Industrial (International) Co., Ltd.
Zhongnam Candle
Zhongxing Shenyang Commercial Building (Group) Co., Ltd.

[FR Doc. 04–5802 Filed 3–12–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

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

ACTION: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Patrick Connolly at (202) 482–1779, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION: On August 22, 2003, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (Aug. 22, 2003). The period of review is July 1, 2002 through June 30, 2003. The review covers two exporters of subject merchandise to the United States.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. On March 9, 2004, the Department issued a revised surrogate country selection memorandum to interested parties in this proceeding, in which: 1) Pakistan had been eliminated as an acceptable surrogate country selection; 2) Egypt and Morocco had been added as acceptable surrogate country selections; and 3) economic indicators had been updated for all countries. We requested comments from interested parties for consideration in the preliminary results by April 8, 2004. In order to allow sufficient time for interested parties to comment and provide surrogate value information based on the revised surrogate country selection memorandum, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751(a)(3)(A) of the Act, we have fully extended the deadline by 120 days until July 30, 2004.

Dated: March 9, 2004.

Jeffrey May,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. 04–5801 Filed 3–12–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–887]

Notice of Postponement of Final Determination of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China

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

ACTION: Notice of postponement of final determination of antidumping duty investigation.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 and (202) 482–5811 respectively.

SUPPLEMENTARY INFORMATION:

Background

This investigation was initiated on July 14, 2003. *See Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686 (July 18, 2003) . The period of investigation ("POI") is October 1, 2002 through March 31, 2003. On January 27, 2004, the Department of Commerce ("Department") published the notice of preliminary determination. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887 (January 27, 2004).

Postponement of Final Determination

Section 735(a)(2) of the Tariff Act of 1930 ("the Act") provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made

by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four–month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On February 27, 2004, the respondent Qingdao Wenkem (F.T.Z.) Trading Company Limited ("QWTC") requested a nine–week extension of the final determination and also requested an extension of the provisional measures. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) QWTC accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are extending the due date for the final determination until no later than 135 days after the publication of preliminary determination in the **Federal Register**. Therefore, the final determination is now due on June 10, 2004. Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act.

Dated: March 8, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5799 Filed 3–12–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894, A–570–895]

Notice of Initiation of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China

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

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier at (202) 482–2667, Rachel Kreissl at (202) 482–0409, and Nazak Nikakhtar at (202) 482–9079 of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petition

On February 17, 2004, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Seaman Paper Company of Massachusetts, Inc. ("Seaman"); American Crepe Corporation ("American Crepe"); Eagle Tissue LLC ("Eagle"); Flower City Tissue Mills Co. ("Flower City"); Garlock Printing & Converting, Inc. ("Garlock"); Paper Service Ltd. ("Paper Service"); Putney Paper Co., Ltd. ("Putney"); and the Paper, Allied–Industrial, Chemical and Energy Workers International Union AFL–CIO, CLC ("PACE") (collectively "Petitioners"). Seaman, Eagle, Flower City , Garlock, Paper Service, and Putney are domestic producers of certain tissue paper products. Seaman and American Crepe are domestic producers of certain crepe paper products. On February 18, 2004, February 20, 2004, and February 24, 2004, the Department asked Petitioners to clarify certain aspects of the Petition. On February 23, 2004, February 24, 2004, and February 27, 2004, Petitioners submitted information to supplement the Petition ("First Supplemental Response," "Second Supplemental Response," and "Third Supplemental Response," respectively). On February 27, 2004, the Department requested that Petitioners provide publicly ranged data for the quantity and value of imports (*see Memorandum to the File: Request for Publicly Ranged Data for Volume and Value of Imports of Tissue Paper and Crepe Paper From the Peoples Republic of China*, dated February 27, 2004). On March 3, 2004, Petitioners filed their response to the Department's request ("Fourth Supplemental Response"). In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege that both imports of certain tissue paper products and certain crepe paper products from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the respective U.S. industries.

The Department finds that Petitioners filed their Petition on behalf of each domestic industry because they are an interested party as defined in section 771(9)(C) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the investigations they are presently seeking. *See Determination of Industry Support for the Petition* section below.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like products, Petitioners do not offer definitions of domestic like products distinct from the scopes of the investigations. Petitioners state that the two domestic like products are certain tissue paper products and crepe paper products. Based on our analysis of the information submitted in the Petition, we have determined that there are two domestic like products, certain tissue paper products and certain crepe paper products, which are defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of these domestic like products. For more information on our analysis and the data upon which we relied, *see* First Supplemental Response; *Antidumping Duty Investigation Initiation Checklist* ("*Initiation Checklist*"), dated March 8, 2004, Attachment II - Industry Support on file in the Central Record Unit ("CRU") in room B–099 of the main Department of Commerce building. Additionally, Petitioners stated that they do not object if the Department wants to conduct two separate investigations of certain tissue paper products and certain crepe paper products (*see First Supplemental Response*).

Based on the foregoing reasons and facts of this investigation, the Department will conduct two separate investigations of the subject merchandise, an individual investigation of certain tissue paper products from the PRC and an individual investigation of certain crepe paper products from the PRC.

In determining whether the domestic petitioners have standing, we considered the industry support data, contained in the Petition with reference to the domestic like products as defined above in the "Scope of the Investigations" section. Petitioners note that the Harmonized Tariff System does not have discrete categories for tissue paper products and crepe paper products. Consequently, Petitioners derived estimates of total imports for each product by summing market intelligence data and applying actual industry knowledge. *See* Petition at 34. Petitioners provided a declaration from an individual familiar with the tissue paper and crepe paper industries in the United States to support their market intelligence findings. *See* Petition at Exhibit 9.

Using the data described above, individual shares of the total estimated U.S. production of both certain tissue paper products and certain crepe paper products, represented by Petitioners in year 2003, exceeds 50 percent of total domestic production of certain tissue paper products and over 50 percent of total domestic production of certain crepe paper products. Therefore, the Department finds the domestic producers of certain tissue paper products who support the Petition account for at least 25 percent of the total production of the domestic like product. The Department also finds the domestic producers of crepe paper products who support the Petition account for at least 25 percent of the total production of that domestic like product. In addition, as no domestic producers have expressed opposition to the Petition, the Department also finds the domestic producers of both certain tissue paper products and certain crepe paper products, who support the Petition, account for more than 50 percent of the total domestic production of their respective products produced by those portions of the industries expressing support for, or opposition to, the Petition.

Therefore, we find that Petitioners have met the requirements of section 732(c)(4)(A) of the Act, with respect to both certain tissue paper products and crepe paper products.

Scope of the Investigations

The products covered by these two investigations are: 1) certain tissue paper products, and 2) certain crepe paper products from the People's Republic of China.

Tissue Paper Products

The tissue paper products subject to investigation are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this investigation may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this investigation is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this investigation may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

Tissue paper products subject to this investigation do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States ("HTSUS") and appear to be imported under one or more of the several different "basket" categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30, HTSUS 4802.54, HTSUS 4802.61, HTSUS 4802.62, HTSUS 4802.69, HTSUS 4804.39, HTSUS 4806.40, HTSUS 4808.30, HTSUS 4808.90, HTSUS 4811.90, HTSUS 4823.90, HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Excluded from the scope of the investigation are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTS 4803.00.20.00 and 4803.00.40.00).

Crepe Paper Products

Crepe paper products subject to investigation have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flameproofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame–retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye–colored, surface–colored, surface decorated or printed, glazed, sequined, embossed, die–cut, and/or flame–retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this investigation may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.

Crepe paper products subject to this investigation do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States ("HTSUS") and appear to be imported under one or more of the several different "basket" categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30, HTSUS 4802.54, HTSUS 4802.61, HTSUS 4802.62, HTSUS 4802.69, HTSUS 4804.39, HTSUS 4806.40, HTSUS 4808.30, HTSUS 4808.90, HTSUS 4811.90, HTSUS 4823.90, HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Comments

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Period of Investigation

The anticipated period of investigation ("POI") for the both certain tissue paper products and certain crepe paper products will be July 1, 2003 through December 31, 2003. *See* 19 CFR 351.204(b).

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The source or sources of data for the deductions and adjustments relating to U.S. market prices, cost of production ("COP"), and normal value ("NV") have been accorded treatment as business proprietary information. Petitioners' sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re–examine this information and revise the margin calculations, if appropriate.

Export Price

For certain tissue paper products and certain crepe paper products from the PRC, Petitioners based their calculations of U.S. Price on Export Price ("EP"), as tissue paper products and crepe paper products were offered for sale to unaffiliated U.S. purchasers prior to their importation. Prices were based on price quotes obtained by Petitioners from three Chinese producers of certain tissue paper products and crepe paper products in November 2003. *See* Petition Exhibit 31. Based on these quotes, Petitioners calculated an average per–unit price for 7 x 20, 20 count, white folded tissue paper and an average per–unit price for a 1: inch x 81 foot, scarlet crepe streamer in U.S. dollars. See Petition at 28 and Exhibit 30. Terms of delivery are free on board ("FOB") China port.Petitioners were unable to adjust the U.S. price for deductions resulting from foreign inland freight and brokerage and handling charges incurred in China since Petitioners could not assess the exact distances that Chinese producers shipped the subject merchandise. Therefore, Petitioners note that the antidumping margin for certain tissue paper products and certain crepe paper products in the Petition are understated and conservative to the extent that the Petitioners' calculation of U.S. Price does not deduct foreign inland freight and brokerage and handling charges incurred in China. *See* Petition at 28–29.

Normal Value ("NV")

Petitioners assert that the Department considers China to be a NME and therefore, constructed NV based on the factors of production methodology pursuant to section 773(c) of the Act. According to section 773(c) of the Act, if subject merchandise is exported from a NME country, the Department shall determine NV based on the value of the factors of production ("FOP") used to produce the subject merchandise, as valued in a surrogate market economy country. In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50,608, 50,609 (October 4, 2001). In previous cases, the Department has determined that China is a NME country. The NME status of China has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of these investigations. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of China's NME status and the granting of separate rates to individual exporters.

Because China is a NME country, Petitioners stated that they valued all FOPs for producing certain tissue paper products and certain crepe paper products according to the values of those factors in India, the surrogate market economy country. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58,115, 58,117 (November 20, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50,608, 50,609 (October 4, 2001). The surrogate values were derived from publicly published domestic prices, import prices, and quoted prices obtained from Indian manufacturers and reprinted in industry publications. *See* Petition at 21–27 and Exhibit 12. Factory overhead, general and administrative expenses, profit, the cost of packing, and other expenses were added to the cost of manufacturing associated with the production of each subject merchandise. *See* Petition at Exhibit 30.

Petitioners assert that India was an appropriate surrogate country based on the Department's surrogate country selection criteria for determining the NVs for subject merchandise from a NME country. Specifically, the two selection criteria, as required by the statute (*see* section 773(c)(4) of the Act), are economic comparability and significant production of comparable merchandise.

Petitioners point out that the Department has consistently found India to be an appropriate surrogate for China based on 1) the overall economic development of India according to the per capita gross national product ("GNP"), the national distribution of labor in India, and the growth rate in per capita GNP (*see* Memorandum from Catherine Bertrand, Case Analyst, Through Edward C. Yang Office Director, and James C. Doyle, Program Manager, To the File, *Antidumping Investigation of Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China: Selection of a Surrogate Country* at 2 (April 23, 2001)); and 2) findings that India is a "significant producer" of comparable merchandise. See section 773(c)(4) of the Act. Petitioners obtained promotional materials from Pudumjee Pulp and Paper, an Indian producer of comparable merchandise, that supports

a finding that India is a significant producer of certain tissue paper products and certain crepe paper products. *See* Petition at 18 and Exhibit 13.

Although the usage rates of the FOPs for both certain tissue paper products and certain crepe paper products should be based on the actual consumption rates of the investigated Chinese producers (*see* section 773(c)(1) of the Act and 19 CFR 351.408(a)), Petitioners were unable to obtain the true amounts of inputs consumed by the Chinese producers. Petitioners established reasonable estimates of the per–unit consumption amounts of the FOPs, actual consumption rates of the FOPs, and usage rates of the FOPs for certain tissue paper products and certain crepe paper products produced by the Chinese producers, based on the actual production experience and consumption rates of a domestic producer of tissue paper products and crepe paper products during the period July 1, 2003 through December 31, 2003, the proposed POI. *See* Petition at 19. This domestic producer's tissue paper and crepe paper production processes are representative of the production experiences of the Chinese manufacturers of subject merchandise that are exported to the United States. *See* Petition at 19 and Exhibit 14; Petition at 20, Exhibit 14, and Third Supplemental Response at Exhibit 3, for revised calculations of NV and FOP. Additionally, according to Petitioners, the tissue paper products and crepe paper products produced by this domestic manufacturer are also highly representative of the Chinese producers tissue paper products and crepe paper products in size, packaging, and tissue color. *See* Petition at 20.

The FOP values of the domestic producer of tissue paper products and crepe paper products were adjusted to account for the known differences in quantities and production processes used by the Chinese producers of subject merchandise. *See* Declaration (Petition at Exhibit 5).

However, Petitioners believe that the FOP usage rates contained in the Petition are conservative estimates of the actual usage rates incurred by Chinese manufacturers of subject merchandise because Petitioners believe that the domestic producers' production experience is more cost–efficient than the production methods of Chinese manufacturers of both tissue paper products and crepe paper products. *See* Petition at pages 19 and 20 and Exhibit 5, Paragraphs 10 and 11.

Petitioners also note that the production process of tissue paper differs between U.S. producers and Chinese manufacturers in one particular respect. Typically, Chinese production of tissue paper products employs an extensive amount of manual labor for folding and packaging the merchandise. Petitioners stated that in constructing the normal values for Chinese tissue paper products, they used labor hour data from domestic companies that offer manual folding and packaging services to domestic producers of tissue paper, as an estimate of the labor hours used to fold and package the Chinese tissue paper products. *See* Petition at 20.

Petitioners calculated the total cost for each input used to produce the subject merchandise by converting Indian prices denominated in rupees to U.S. dollars, using the average Indian rupee/U.S. dollar exchange rate during the period July 1, 2003 through December 31, 2003. The average exchange rate was calculated based on daily exchange rates downloaded from the ITA website. *See* Petition at 21.

Factor input prices for all raw materials consist of prices from only non–NME countries except for Thailand, Korea, and Indonesia, consistent with prior Department determinations. These prices were the most contemporaneous prices available at the time of the Petition filing.

Factor of Production for: White Folded Tissue Paper, 7 x 20 Inch, 20 Count

Tinopal is an optical brightener used to enhance the whiteness of white tissue paper, the sample product chosen by Petitioners to calculate normal value, and was valued by Petitioners using publicly available Indian intelligence trade data obtained from InfoDrive. *See* Petition at 24. Indian imports of Tinopal are categorized under HTS number 3204.20.10 for the period June 2003 to August 2003. *See* Petition at 24 and Second Supplemental Response at Exhibit 5.

Factors of Production for: Scarlet Crepe Streamer, 1 3/4 Inch x 81 Foot

The chemical dye used in the production of scarlet crepe streamers was valued using price quotes provided in *Chemical Weekly*, an Indian chemical industry journal. Petitioners stated that editions of *Chemical Weekly* provided Indian market prices, from the Mumbai Dye Market, for dyes used in the manufacture of tissue paper, such as "Scarlet 4B (Direct Red)," for the months of July 2003 through November 2003. Petitioners stated that no prices were available for December 2003. *See* Petition at 22 and Exhibits 16 & 17.

Cartafix, a dye fixative and factor input used in the production of scarlet crepe streamers, is categorized under HTS number 3809.92.00. Petitioners valued Cartafix using publicly available Indian intelligence trade data from InfoDrive for the period March 2003 through May 2003. Prices were represented from non–NME countries only, and these prices were the most contemporaneous data available to Petitioners. Accordingly, prices for Cartafix were inflated using the World Price Index ("WPI") inflator. *See* Petition at 23 and Second Supplemental Response at Exhibit 5.

Flame–proof salts are only used in the production of crepe paper products and were valued by Petitioners using Indian import data contained in the *Monthly Statistics of Foreign Trade of India*, ("MSFTI"). The surrogate value for flame–proof salts was based on Indian imports classified under tariff heading 3809.92.00. See Petition at Exhibit 24 and at page 24. The value was based on data for the period April 2002 through January 2003 and was inflated using the WPI inflator. See Second Supplemental Response at 6 and Exhibits 5 & 6.

Factors of Production for: White Folded Tissue Paper, 7 x 20 Inch, 20 Count and Scarlet Crepe Streamer, 1 3/4 Inch x 81 Foot

Petitioners valued wood pulp using Indian surrogate values derived from InfoDrive (*see* www.InfodriveIndia.com), a source of surrogate value data recognized and relied upon by the Department in other proceedings. The data from InfoDrive are specific to the types of wood pulp consumed in the production of subject merchandise and are also contemporaneous with the POI *See* Second Supplemental Response at 4 and Exhibit 2.

Sulfuric acid is an input used in the production of both tissue paper products and crepe paper products. Petitioners stated that sulfuric acid was valued using price quotes, from the Mumbai and Bangalore chemical markets, printed in *Chemical Weekly* for the period July 2003 through December 2003. Petitioners stated that prices from the two markets, spanning the POI, were comparable, and the prices were averaged in Petitioners' normal value calculations. *See* Petition at Exhibit 18. Source documentation was included for these chemical prices published in *Chemical Weekly*. *See* Petition at 22 and Exhibit 19.

Water was valued by Petitioners using the publicly available water tariff rates reported in the second *Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank (*see* Petition at Exhibit 20) in

accordance with the Department's reliance on this source in the past (*see Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China*, 68 FR 13,669, 13,771 (March 20, 2003)). Water tariff rates were provided as of 1995–1996 for three areas in India in which the subject merchandise is produced: Chennai, Delhi, and Mumbai. Petitioners averaged the rupee per kilogram rates applicable to industrial users in Chennai and Delhi and factories/works/mills in Mumbai to derive an average rupee per kilogram price. Because Petitioners could only acquire data reported for a period prior to the POI, the average rupee per kilogram price was adjusted using the WPI inflator. *See* Petition at 23 and Second Supplemental Response at Exhibit 6.

Other Factors of Production: Packaging, Labor and Energy Costs

Packing was calculated for both tissue paper products and crepe paper products using retail bags, retail labels, carton labels, wholesale plastic bags, and corrugated boxes. Petitioners valued retail labels, carton labels, and wholesale plastic bags, and corrugated boxes using Indian import data contained in the MSFTI. The HTS classification was based on Indian imports under tariff heading 4821.10.01, 3923.21.00, 4819.10.01 and 4819.20.01, respectively. Petitioners stated that they calculated a surrogate value for each packing material based on Indian imports classified under these tariff headings for the period April 2002 through January 2003, which were the most contemporaneous data available. *See* Petition at 26 & 27 and Second Supplemental Response at Exhibits 3 & 5. Petitioners obtained the surrogate price for retail bags from price quotes of an Indian producer of retail bags of precisely the type consumed in the production of subject merchandise. The Indian surrogate price is specific to the types of retail bags consumed in the production of subject merchandise and the POI. *See* Second Supplemental Response at 5 and Exhibits 2, 3, & 5.

Pursuant to 19 CFR § 351.408(c)(3), Petitioners used the labor value for China as published by the Department at http://ia.ita.doc.gov/wages/01wages/01wages.html. The most current labor value in China is US$ 0.90 per hour based on 2001 data. *See* Petition at 25.

Energy costs associated with the manufacture of tissue paper products and crepe paper products consist of electricity and fuel oil. Petitioners used Indian prices for industrial electricity and fuel oil values published in the 2003 second quarter edition of the International Energy Agency's *Energy Prices and Taxes* ("IEA") publication, which provided data for the year 2000. *See* Petition at Exhibit 25. Because this data is for a time period outside the POI, they were adjusted for inflation using the WPI inflator. *See* Petition at 25, 26 and Exhibit 25 and Second Supplemental Response at Exhibit 4.

Factory overhead, SG&A, and profit ratios for subject merchandise were calculated by Petitioners using the financial statement of Pudumjee Pulp and Paper, an Indian producer of subject merchandise. *See* Petition at 27 and Exhibit 29, and Second Supplemental Response at 6 and 7. Factory overhead, SG&A, and Profit ratios for subject merchandise were 36.31 percent, 34.13 percent, and 1.59 percent respectively. *See* Petition at Exhibit 29. Depreciation was allocated according to the type of fixed assets to which the depreciation was related. *See* Second Supplemental Response at 6 and Petition, Exhibit 29 at 23.

Based on the above calculations, Petitioners estimated FOP–based NVs for Chinese production of certain tissue paper products and certain crepe paper products. *See* Initiation Checklist for proprietary details of FOP–based NVs. The estimated antidumping margin for tissue paper is 163.36 percent and the estimated antidumping margin for crepe paper is 266.83 percent. *See* Third Supplemental Response at Exhibit 3.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe imports of certain tissue paper products and certain crepe paper products from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. tissue paper industry and crepe paper industry are being materially injured, or threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV from the PRC.

Petitioners contend that the tissue paper and crepe paper industry's injured condition is evident from examining economic indicators preceding the POI and during the POI, such as increase in volume and market share of imports, decline in domestic prices, decrease in U.S. shipments, decline in operating income, decrease of domestic market share, drop in domestic capacity utilization rates, lost sales and lost revenue. *See* Petition at pages 35–45; *Initiation Checklist* at Attachment III; Second Supplemental Response at pages 11–12.

Initiation of Antidumping Investigations

Based on our examination of the Petition covering certain tissue paper products and certain crepe paper products, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating two antidumping duty investigations to determine whether imports of certain tissue paper products and certain crepe paper products from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or July 26, 2004.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the government of the PRC. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

International Trade Commission Notification

The ITC will preliminarily determine on April 2, 2004, whether there is reasonable indication that imports of certain tissue paper products and certain crepe paper products from the PRC are causing, or threatening, material injury to a U.S. industry. A negative ITC determination will result in the investigations being terminated with respect to these products; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Administrative Protective Order ("APO") Access

APO access in these investigations will be granted under two separate APOs, with separate APO and Public Service Lists. All interested parties who had been granted APO status under the initial case number assigned to tissue paper products and crepe paper products from the People's Republic of China will need to re–apply for APO access in the now separate investigation of crepe paper products under the case number A–570–895. The initial APO listing both products will be amended for the tissue paper products investigation. Any party who no longer qualifies to be an interested party in the tissue paper products investigation will

need to withdraw their APO application as it pertains to this investigation.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 8, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5798 Filed 3–12–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030404D]

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 14, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington DC 20230 (or via e-mail at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149,(phone 305–361–4263) or at *john.poffenberger@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery quotas are established for many species in the fishery management plans developed by both the Gulf of Mexico Reef Fish Fishery Management Council or the South Atlantic Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*i.e.*, lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is monthly; however, some fishery quotas, *e.g.*, the mackerel gill net, necessitates weekly or by the trip.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

II. Method of Collection

The Southeast Fisheries Science Center will provide a reporting form to each dealer selected to report the minimum information necessary to monitor the quota(s). The dealer must complete the form by providing the name and permit number of the company and provide the amount purchased (landed) for the designated species. This form must be faxed or sent as an e-mail attachment to the Southeast Fisheries Science Center within 5 business days of the end of each reporting period. For dealers that do not have a rapidfax machine or access to e-mail, pre-addressed, pre-paid envelopes will be provided.

Fishery biologists that are located a strategic fishing ports throughout the Southeast Region (North Carolina through Texas) intercept fishermen as they are unloading their catch and interview them.

III. Data

OMB Number: 0648–0013.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations (seafood dealers and fishermen).

Estimated Number of Respondents: 5,5000.

Estimated Time Per Response: Fifteen minutes for a dealer report in the golden crab, red snapper, rock shrimp and Puerto Rican prohibited coral dealers; 5 minutes to fax or mail a red snapper dealer report; 5 minutes for a dealer quota monitoring report in the snowy grouper, tilefish, mackerel, and grouper fisheries; 5 minutes for an annual vessel interview; 10 minutes for other interviews; 10 minutes for a dealer and vessel report in the eastern Gulf of Mexico runaround gill mackerel fishery; and 4.5 minutes for a wreckfish dealer report.

Estimated Total Annual Burden Hours: The estimated annual burden hours for the reporting activities in this collection are: shrimp interviews, 914 hours; biological sampling (trip interview program), 483 hours; mackerel dealer reporting for quota monitoring, 78 hours; snowy grouper/tilefish/amberjack dealer reporting 57 hours; red snapper dealer reporting, 71 hours; rock shrimp, golden crab and coral dealer reporting, 15 hours each; and wreckfish dealer reporting, 71 hours. The total annual burden is estimated to be 1,900 hours.

Estimated Total Annual Cost to Public: There are no direct costs to the public (fishermen and seafood dealers) other than the time to respond to the survey. All reports are to be submitted in pre-paid envelopes, via rapidfax or as an attachment to an e:mail.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–5824 Filed 3–12–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Secrecy and License to Export.

Form Number(s): N/A.

Agency Approval Number: 0651–0034.

Type of Request: Extension of a currently approved collection.

Burden: 1,310 hours annually.

Number of Respondents: 1,669 responses per year. Of this total, the USPTO expects that approximately 6 per year for petition for rescission of secrecy order, 3 per year for permit to disclose or modification of secrecy order, 1 per year for general and group permits, 1,402 per year for petition for expedited handling of license (no corresponding application), 126 per year for petition for expedited handling of license (corresponding U.S. application), 1 for petition for changing scope of license, and 130 per year for a petition for retroactive license will be filed.

Avg. Hours Per Response: It is estimated to take an average of 3.0 hours for permit for rescission of secrecy order; 2.0 hours for permit to disclose or modification of secrecy order; 1.0 hours for general and group permits; 0.5 hours each for foreign filing licenses: petition for expedited handling of license (no corresponding application), petition for expedited handling of license (corresponding U.S. application), petition for changing scope of license; and 4.0 hours for petition for retroactive license for the public to gather, prepare and submit the various petitions.

Needs and Uses: In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Director of the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 U.S.C. 181–188 and administered through 37 CFR 5.1–5.33. There are no forms associated with this collection of information.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the Federal government; and State, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, (703) 308–7400, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before April 14, 2004 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 5, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–5727 Filed 3–12–04; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 14, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 9, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: The Leveraging Educational Assistance and Partnership (LEAP) and Special LEAP (SLEAP) Programs application to participate.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56. *Burden Hours:* 112.

Abstract: The LEAP and SLEAP programs use matching Federal and State funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. On this application the states provide information the Department requires to obligate funds and for program management. The signed assurances legally bind the states to administer the programs according to regulatory and statutory requirements. With the clearance of this collection, the Department is seeking to automate the application for web-based applying for

both the LEAP Program and the subprogram, SLEAP. There are no significant changes to the current LEAP form data elements, there are however, some additional items pertaining to the SLEAP program which combines the application into one form for both programs.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2359. 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 Joe Schubart at his e-mail address *Joe Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–5704 Filed 3–12–04; 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 May 14, 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: March 10, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: New.

Title: Title III Biennial Evaluation Report Required of State Education Agencies Regarding Activities Under the NCLB Act of 2001.

Frequency: Biennially.

Affected Public: State, local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden Responses: 52.

Burden Hours: 260.

Abstract: State Directors of Title III of the No Child Left Behind (Elementary and Secondary Education) Act—Language Instruction for Limited English Proficient and Immigrant students—are required to transmit their State Formula Grant Biennial Evaluation Report to the Secretary of Education every two years. Approval is being requested for the form on which to submit that report.

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 2479. 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 Shelia Carey at her e-mail address *Shelia 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. 04–5789 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 14, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 9, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Fiscal Operations Report for 2003–2004 and Application to Participate for 2005–2006 (FISAP) and Reallocation Form E40–4P.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2.

Burden Hours: 26,339.

Abstract: This application data will be used to compute the amount of funds needed by each school for the 2005–2006 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2003–2004 award year, and as part of the school funding process. The Reallocation form is part of the FISAP on the web. Schools will use it in the summer to return unexpended funds for 2003–2004 and request supplemental FWS funds for 2004–2005.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2426. 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 Joe Schubart at his e-mail address *JoeSchubart@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. 04–5790 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

ACTION: Notice of the 2004–2005 award year deadline dates for the campus-based programs.

SUMMARY: The Secretary announces the 2004–2005 award year deadline dates for postsecondary institutions to submit various requests and documents for the campus-based programs.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs are collectively known as the campus-based programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its "Dear Partner" letters and the Federal Student Aid Handbook, the Department will continue to provide additional information for the listed individual deadline dates via the Information for Financial Aid Professionals (IFAP) Web site at: *http://www.ifap.ed.gov*.

Deadline Dates: The following table provides the deadline dates for the campus-based programs for the 2004–2005 award year. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2004–2005 Award Year Deadline Dates

What does an institution submit?	Where is it submitted?	What is the deadline for submission?
1. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2004–2005 award year.	The FWS Community Service waiver request and justification must be submitted by one of the following methods: Hand delivery to: FWS Coordinator, U.S. Department of Education, 830 First Street, NE., room 61C4, Washington, DC 20002; or Mail to: The same above address for hand delivery except use Zip Code 20202–5453; or Fax to: (202) 275–0950.	April 30, 2004.
2. The Campus-Based Reallocation Form designated for the return of 2003–2004 funds and the request of supplemental FWS funds for the 2004–2005 award year.	The Reallocation Form must be submitted electronically and is located in the "Setup" section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*.	August 20, 2004.

2004–2005 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	Where is it submitted?	What is the deadline for submission?
3. The 2003–2004 Fiscal Operations Report and 2005–2006 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: *http://www.cbfisap.ed.gov*. The FISAP form must be submitted electronically via the Internet, and the combined signature page must be mailed to: The FISAP Administrator, INDUS Corporation, 1953 Gallows Road, Suite 300, Vienna, VA 22182.	October 1, 2004.
4. The Work-Colleges Program Report of 2003–2004 award year expenditures.	The 2003–2004 Work-Colleges Program Report can be found in the "Setup" section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The report must be signed and submitted by: Hand delivery to: Work-Colleges Program, Campus-Based Operations Branch, U.S. Dept. of Education, 830 First Street, NE., room 61F1, Washington, DC 20002; or Mail to: The same above address for hand delivery except use Zip Code 20202–5453.	October 18, 2004.
5. A request for a waiver of the 2005–2006 award year penalty for the underuse of 2003–2004 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The request and justification must be submitted electronically via the Internet.	February 11, 2005
6. The Institutional Application for Approval to Participate in the Federal Student Financial Aid Programs.	An institution that has not already established eligibility must submit an application to Case Management and Oversight through the ED Web site at: *http://www.eligcert.ed.gov*.	February 11, 2005.
7. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2005–2006 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the "Setup" section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The application and agreement must be signed and submitted by: Hand delivery to: Work-Colleges Program, Campus-Based Operations Branch, U.S. Dept. of Education, 830 First Street, NE., room 61F1, Washington, DC 20002; or Mail to: The same above address for hand delivery except use Zip Code 20202–5453.	March 11, 2005.

Note: The deadline for electronic submissions is 11:59 p.m. (Eastern Time) on the deadline date. Transmissions must be completed and accepted by 12 midnight to meet the deadline.

Proof of Delivery of Request and Supporting Documents

If you submit documents when permitted by mail or by a non-U.S. Postal Service courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the request and documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific "Dear Partner" letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Director of Campus-Based Operations Branch, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 61C3, Washington, DC 20202–5345. Telephone: (202) 377–3174 or via the Internet: *Richard.Coppage@ed.gov*.

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 10, 2004.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 04–5819 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1865–ZA00

Office of Safe and Drug-Free Schools—Mentoring Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education .

ACTION: Notice of proposed priorities, requirements, and selection criteria.

SUMMARY: We propose priorities, requirements, and selection criteria under the Mentoring Programs discretionary grant competition. We may use these priorities, requirements, and selection criteria for competitions in FY 2004 and later years.

DATES: We must receive your comments on or before April 14, 2004.

ADDRESSES: Address all comments about these proposed priorities, requirements and selection criteria to Bryan Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202–6450. If you prefer to send your comments through the Internet, please use the following address: *bryan.williams@ed.gov.*

You must include the phrase "Mentoring Programs-Comments on FY 2004 Proposed Priorities" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Bryan Williams (202) 260–2391.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities, requirements, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities, requirements, and selection criteria in room 3E259, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities, requirements and selection criteria. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Priorities, Requirements, and Selection Criteria

We will announce the final priorities, requirements, and selection criteria in a notice in the **Federal Register.** We will determine the final priorities, requirements and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, requirements or selection criteria subject to meeting applicable rulemaking requirements.

Discussion of Proposed Priorities

Building on the infrastructure and support available in school settings, including private schools, these proposed priorities focus on youth who are most at risk of educational failure, dropping out of school, or involvement in criminal or delinquent activities, or who lack strong positive role models. To the extent practicable, applicants must propose programs that follow the same students for all three years of the program. New participants may be selected to replace students who are not able to continue in the program, or for other reasons related to attrition.

Proposed Priorities: We propose the following absolute and competitive preference priorities.

Proposed Absolute Priority—This priority would support projects that address the academic and social needs of children with the greatest need through school-based mentoring programs and activities and provide these students with mentors. These programs and activities must serve children with the greatest need in one or more grades 4th through 8th living in rural areas, high-crime areas, or troubled home environments, or who attend schools with violence problems.

Proposed Competitive Preference Priority—We propose a priority under which we will award five additional points to a consortium of eligible applicants that includes either: (a) At least one LEA and at least one CBO other than a school that provides services to youth and families in the community; or (b) at least one private school that qualifies as a nonprofit CBO and at least one other CBO other than a school, that provides services to youth and families in the community.

The consortium must designate one member of the group to apply for the grant, unless the consortium is itself eligible as a partnership between a local educational agency and a nonprofit, community-based organization. To

receive this competitive preference, the applicant must clearly identify the agencies that comprise the consortium and must include a detailed plan of their working relationship and of the activities that each member will perform, including a project budget that reflects the contractual disbursements to the members of the consortium. For the purpose of this priority, a "consortium" means a group application in accordance with the provisions of 34 CFR 75.127 through 75.129.

Proposed Eligibility Requirement for All Applicants

The No Child Left Behind Act (NCLB) embodies the principles of the Government Performance and Results Act (GPRA) and its focus on performance and accountability. It demands achievement in return for investment, and requires a system of performance measures throughout the educational enterprise. The NCLB act and its principles of reform—accountability, flexibility, expanded parental options and doing what works—are also the foundation of the Department's strategic plan. This plan states the measurable goals and objectives that the Department intends to achieve, and mandates a performance and accountability system for this agency as well as its grantees. Therefore, we propose that, to be eligible for funding, an applicant must include in its application an assurance that it will establish clear, measurable performance goals, and will collect and report to the Department data related to the established GPRA performance indicators for the Mentoring Programs grant competition. We will reject any application that does not contain this assurance.

Proposed Application Requirement for Community-Based Organizations

Because the focus of this program is school-based mentoring, we propose that each community-based organization (CBO) that is eligible to apply for funding provide a letter of agreement to participate from an LEA or private school. The agreement (not a partnership as described in the competitive preference priority) must delineate the roles and responsibilities of each entity, and must contain the signatures of the authorized representative from the LEA or private school where program activities will primarily be located, and the authorized representative of the CBO that will provide program services.

Proposed Definitions

The statute does not define the term "school-based mentoring." We propose to define the term "school-based mentoring" to mean mentoring activities that occur primarily on school grounds, with teachers, counselors, or other school staff assisting in the identification and referral of participants.

We propose to define the term "core academic subjects" to mean English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Proposed Performance Measures Under the Government Performance and Results Act (GPRA)

We propose the following key performance measures for assessing the effectiveness of this program: (1) The percentage of student/mentor matches that are sustained for a period of twelve months will increase; (2) The percentage of mentored students who demonstrate improvement in core academic subjects as measured by grade point average after 12 months will increase; and (3) The percentage of mentored students whose number of unexcused absences will decrease.

Proposed Selection Criteria

The Secretary proposes to use the following selection criteria to evaluate applications under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(1) *Need for the Project.* (10 points)

In determining the need for the proposed project, the following factor is considered:

(a) The magnitude and severity of problems that will be addressed by the project, including the number of youth to be served who: (i) are at risk of educational failure or dropping out of school, (ii) are involved in criminal, delinquent, or gang activities, or (iii) lack strong, positive role models. (10 points)

(2) *Quality of the Project Design.* (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The degree to which the applicant proposes a high quality mentoring project that provides for, but is not limited to: (1) A low student-to-mentor ratio (one-to-one, where practicable), (2) frequent contacts between mentors and the children they mentor; and (3) mentoring relationships of 12 months or more duration. (10 points)

(b) The quality of mentoring services that will be provided, including the quality of services designed to improve academic achievement in core academic subjects, strengthen school bonding (positive commitment and attachment to school), and promote pro-social norms and behaviors, and the resources, if any, the eligible entity will dedicate to providing children with opportunities for job training or postsecondary education. (10 points)

(c) The capability of each eligible entity to effectively implement its mentoring program, and the degree to which parents, teachers, community-based organizations, and the local community have participated, or will participate, in the design and implementation of the proposed mentoring program. (10 points)

(3) *Quality of the Management Plan.* (35 points)

In determining the quality of the management plan, the following factors are considered:

(a) The quality of the system that will be used to manage and monitor mentor reference checks, including, at a minimum, child and domestic abuse record checks and criminal background checks. (10 points)

(b) The quality of the training that will be provided to mentors, including orientation, follow-up, and support of each match between mentor and child. (10 points)

(c) The quality of the applicant's plan to recruit and retain mentors, including outreach, criteria for recruiting mentors, terminating unsuccessful matches, and replacing mentors, if necessary. (5 points)

(d) The extent to which the applicant provides a comprehensive plan to match mentors with students, based on the needs of the children, including criteria for matches, and the extent to which teachers, counselors, and other school staff are involved. (5 points)

(e) The extent to which the applicant demonstrates the ability to carefully monitor and support the mentoring matches, including terminating matches when necessary and reassigning students to new mentors, and the degree to which the mentoring program will continue to serve children from the 9th grade through graduation from secondary school, as needed. (5 points)

(4) *Quality of Project Personnel.* (10 points)

In determining the quality of project personnel, the Secretary considers:

(a) The qualifications and relevant training of key staff, including time commitments, and experience in mentoring services and case management. (10 points)

(5) *Quality of the Project Evaluation.* (15 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation will provide performance feedback to the Department, grantees, and mentors, and permit periodic assessment of progress toward achieving intended outcomes, including the GPRA performance measures for the Mentoring Program grant competition. (5 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data on the GPRA performance measures for the Mentoring Program grant competition. (10 points)

Executive Order 12866

This notice of proposed priorities, requirements and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities, requirements and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, requirements and selection criteria, we have determined that the benefits of the proposed priorities, requirements and selection criteria justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities, requirements and selection criteria is minimal while the benefits are significant. Grantees may anticipate costs related to completing the application process in terms of staff time, copying, and mailing or delivery. The use of E-Application technology may significantly reduce mailing and copying costs.

The primary benefit of these proposed priorities, requirements and selection criteria is that grantees can support school-based mentoring programs that address the academic and social needs of at-risk youth.

Intergovernmental Review

This program is subject to Executive order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7140.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have the 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 (888) 293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

(Catalog of Federal Domestic Assistance Number 84.184B Office of Safe and Drug-Free Schools—Mentoring Programs)

Dated: March 9, 2004.

Deborah A. Price,

Deputy Under Secretary for Office of Safe and Drug-Free Schools.

[FR Doc. 04–5820 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services For Individuals With Disabilities—Steppingstones of Technology Innovation for Students with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327A

DATES:

Applications Available: March 16, 2004.

Deadline for Transmittal of Applications: April 23, 2004.

Deadline for Intergovernmental Review: June 22, 2004.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $2,900,000.

Estimated Range of Awards: Phases 1 and 2—$100,000–$200,000; Phase 3–$200,000–$300,000.

Estimated Average Size of Awards: Phases 1 and 2—$199,000; Phase 3—$299,000.

Maximum Award: Phases 1 and 2: $200,000 and Phase 3: $300,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 13. We intend to fund, at a minimum, three projects in each phase.

Note: The Department is not bound by any estimates in this notice.

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months. Projects funded under Phase 3 will be funded for up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 687 of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The purpose of this priority is to support projects that—

(a) Develop or conduct research on a technology-based approach for achieving one or more of the following purposes for early intervention, or preschool, elementary, middle school, or high school students with disabilities: (1) Improving the results of education or early intervention; (2) improving access to and participation in the general curriculum, or developmentally appropriate activities for preschool children; and (3) improving accountability and participation in statewide assessment and accountability systems. The technology-based approach must be an innovative combination of a new technology and additional materials and methodologies that enable the technology to improve educational or early intervention results for children with disabilities;

(b) Present a justification on the basis of scientifically rigorous research or theory that supports the effectiveness of the technology-based approach for achieving one or more of the purposes presented in paragraph (a);

(c) Clearly identify and conduct work in *ONE* of the following phases:

(1) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with children with disabilities. Activities may include development, adaptation, and refinement of technology, curriculum materials, or instructional methodologies. Activities must include formative evaluation. The primary product of Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness in improving results for children with disabilities.

(2) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with Phase 1, and subject the approach to rigorous field-based research and evaluation to determine effectiveness and feasibility in educational or early intervention settings. Approaches studied in Phase 2 may have been developed with previous funding under this priority or with funding from other sources. Products of Phase 2 include a further refinement and description of the technology-based approach, and sound evidence that, in a defined range of real world contexts, the approach can be effective in achieving one or more of the purposes presented in paragraph (a) of this priority.

(3) *Phase 3—Research on Implementation:* Projects funded under Phase 3 must select a technology-based approach that has been evaluated for effectiveness and feasibility in a manner consistent with Phase 2. Projects must study the implementation of the approach in multiple, complex settings to acquire an improved understanding of the range of contexts in which the approach can be used effectively, and the factors that determine the effectiveness and sustainability of the approach in this range of contexts.

Approaches studied in Phase 3 may have been developed, tested, researched, and evaluated with previous funding under this priority or with funding from other sources. Factors to be studied in Phase 3 include factors related to the technology, materials, and methodologies that constitute the technology-based approach. Also to be studied in Phase 3 are contextual factors associated with students, teacher attitudes and skills, physical setting, curricular and instructional or early intervention approaches, resources, professional development, policy supports, etc.

Phases 2 and 3 can be contrasted as follows: Phase 2 studies the effectiveness of the approach, while Phase 3 studies the effectiveness the approach is likely to have in sustained use in a range of typical educational settings. The primary product of Phase 3 must be a set of research findings that provide evidence of improved results for children with disabilities and that can be used to guide dissemination and utilization of the technology-based approach;

(d) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in section III. Eligibility Information, 3. *Other: General Requirements* elsewhere in this notice, budget for another annual trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination; and

(e) Prepare products from the project in formats that are useful for specific audiences as appropriate, including parents, administrators, teachers, early intervention personnel, related services personnel, researchers, and individuals with disabilities.

Within the absolute priority, we intend to fund at least two projects focusing on technology-based approaches for children with disabilities, ages birth to age 3.

Also, within this priority, we intend to fund at least two projects for which the project director or principal investigator is in the initial phase of his or her career. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after completing a doctoral program and graduating (*i.e.*, for FY 2004 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 2000–2001 academic year). To qualify for this consideration, the applicant must explicitly state and document that the project director or principal investigator is in the initial phase of his or her career. At least 50 percent of the initial career researcher's time must be devoted to the project.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1487.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,900,000.

Estimated Range of Awards: Phases 1 and 2—$100,000–$200,000; Phase 3—$200,000–$300,000.

Estimated Average Size of Awards: Phases 1 and 2—$199,000; Phase 3—$299,000.

Maximum Award: Phases 1 and 2—$200,000 and Phase 3: $300,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13. We intend to fund, at a minimum, three projects in each phase.

Note: The Department is not bound by any estimates in this notice.

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2

will be funded for up to 24 months. Projects funded under Phase 3 will be funded for up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use in evaluating your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 16, 2004.

Deadline for Transmittal of Applications: April 23, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 22, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Government-Wide Grants.gov Project for Electronic Submission of Applications

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are participating as a partner in the new government-wide Grants.gov Apply site in FY 2004. The Special Education—Technology and Media Services for Individuals with Disabilities program—Steppingstones of Technology Innovation for Students with Disabilities competition—CFDA Number 84.327A is one of the competitions included in this project. If you are an applicant under the Special Education—Technology and Media Services for Individuals with Disabilities program—Steppingstones of Technology Innovation for Students with Disabilities competition, you may submit your application to us in either electronic or paper format.

The project involves the use of the Grants.gov Apply site (Grants.gov). If you use Grants.gov, you will be able to download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

If you participate in Grants.gov, please note the following:

- Your participation is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a D-U-N-S Number

and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation, which will include a PR/Award number (an ED-specified identifying number) unique to your application.

• We may request that you give us original signatures on forms at a later date.

• If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m. (Washington, DC time) deadline, print out your application and follow the instructions included in the application package for the transmittal of paper applications.

You may access the electronic grant application for the Special Education—Technology and Media Services for Individuals with Disabilities program—Steppingstones of Technology Innovation for Students with Disabilities competition at: *http://www.grants.gov*.

Note: Please note that you must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technology and Media Services to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

VII. Agency Contact

FOR FURTH .R INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

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 Grants and Contracts Services Team listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 10, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–5822 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Projects for Children and Young Adults Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326C.

DATES: For dates regarding this priority, see the chart in the Award Information section of this notice.

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Estimated Available Funds: $1,789,000.

For funding information regarding individual States, see chart in the Award Information section of this notice.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 685 of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

Background

IDEA includes provisions designed to ensure that each child with a disability is provided a high-quality individual program of services to meet his or her developmental and educational needs. For children who are deaf and blind to receive such services, intensive technical assistance must be afforded SEAs and LEAs, parents, and professionals regarding appropriate educational placements, accommodations, environmental adaptations, support services, and other matters. In addition, given the severity of deaf-blindness and the low-incidence nature of this population, many early intervention programs or local school districts lack personnel with the training or experience to serve children who are deaf-blind.

Text of Priority: This priority supports projects to build the capacity of SEAs and LEAs, parents, and professionals to improve outcomes for children and young adults who are deaf-blind and their families, by providing technical assistance, information, and training on early intervention, special education, related services, and transitional services. Projects must:

(a) Identify and support specific activities to, at a minimum—

(1) Enhance State capacity to improve services and results for children who are deaf-blind;

(2) Facilitate the achievement of systemic-change goals by improving education opportunities for children who are deaf-blind;

(3) Focus on implementation of research-based best practices;

(4) Ensure that service providers have the necessary skills to address the unique needs of children who are deaf-blind; and

(5) Address the needs of families of children who are deaf-blind.

(b) Maintain needs assessment information to develop Statewide priorities for technical assistance, information, and training across all age ranges by —

(1) Collecting basic demographic information on children who are deaf-blind;

(2) Assessing the critical needs of these children; and

(3) Assessing current needs of the State in providing services to children who are deaf-blind and their families.

(c) Develop and implement procedures to evaluate the impact of program activities on services and outcomes for children and young adults who are deaf-blind and their families by—

(1) Evaluating the effectiveness of strategies in achieving program goals and objectives;

(2) Including measures of change in outcomes for children; and

(3) Consulting with the project's advisory committee regarding the development of the evaluation procedures.

(d) Coordinate and collaborate with SEAs, and other relevant agencies and organizations, including other projects serving children who are deaf-blind under IDEA. This includes specific collaboration activities with the National Clearinghouse on Deaf-Blindness (DB–LINK) and the Technical Assistance Consortium with Children and Young Adults with Deaf-Blindness (NTAC).

(e) Disseminate effective practices and relevant information to families, service providers, LEAs, and agencies.

(f) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of the Office of Special Education Programs' (OSEP) Dissemination Center.

(g) Provide OSEP-specified technical assistance to States. This effort may include: (1) Participation in collaborative Web-based technical assistance activities, or (2) coordination of and participation in State-to-State communities of practice.

(h) Establish and maintain an advisory committee to assist in promoting project activities. Each committee must include at least one adult with deaf-blindness and one student with deaf-blindness, a parent of a child with deaf-blindness, a representative of each SEA and each State lead agency under Part C of IDEA in the State (or States) served by the project, and a limited number of professionals with training and experience in serving children with deaf-blindness.

Funds awarded under this priority may not be used for direct early intervention, special education, or related services provided under Parts B and C of IDEA.

During year two of the project period, each grantee must conduct a comprehensive self-evaluation of the project. The self-evaluation must include a review of the degree to which the project is meeting the proposed objectives and goals and an evaluation of the outcome data. In addition, the Department intends to conduct a limited number of on-site evaluations based on a stratified randomized sample of sites. Costs associated with this on-site evaluation are estimated to be $6,500 and should be included in the project's second year budget.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1485.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary Grants.

Estimated Available Funds: $1,789,000.

For funding information regarding individual States, see chart in the Award Information section of this notice.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2004

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated average size of awards	Maximum award (per year)	Estimated number of awards	Project period
84.326C Projects for Children and Young Adults who are Deaf-Blind.	March 16, 2004	April 19, 2004	June 11, 2004	$1,789,000	$138,000	.....	13	Up to 48 mos.
Arkansas	.....	.....	.....	.....	.....	$118,534		
Iowa	.....	.....	.....	.....	.....	97,054		
Idaho	.....	.....	.....	.....	.....	85,303		
Kentucky	.....	.....	.....	.....	.....	165,145		
Michigan	.....	.....	.....	.....	.....	256,289		
North Carolina	.....	.....	.....	.....	.....	313,649		
Wisconsin	.....	.....	.....	.....	.....	173,484		
Rhode Island	.....	.....	.....	.....	.....	79,368		
South Dakota	.....	.....	.....	.....	.....	101,746		
Tennessee	.....	.....	.....	.....	.....	238,451		
Wyoming	.....	.....	.....	.....	.....	65,000		
District of Columbia.	.....	.....	.....	.....	.....	65,000		
Virgin Islands	.....	.....	.....	.....	.....	30,000		

*The Secretary may make awards under the priority described in the Priority section of this notice to support single or multi-State projects. A State may be served by only one supported project. In determining the maximum funding levels for each State the Secretary considers, among other things, the following factors: (1) Total number of children from birth through age 21 in the State; (2) Number of people in poverty in the State; (3) Previous funding levels; and (4) Maximum and minimum funding amounts. We will reject an application for a State project that proposes a budget exceeding the funding level for a single budget period of 12 months. In the event an applicant proposes a multi-State project, the budget may not exceed the sum for individual participating States. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; for-profit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: 1–301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.326C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use in evaluating your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* See chart.

Deadline for Transmittal of Applications: See chart.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site. We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal

Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions under the *Applicable Regulations* heading, in section I of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program—CFDA Number 84.326C is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program—CFDA Number 84.326C competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at 1–202–260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education–Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program—CFDA Number 84.326C competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education-Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program—CFDA Number 84.326C competition at: *http://e-grants.ed.gov*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

2. *Review and Selection Process:* In making awards under this priority, the Secretary shall consider the proposed availability of services for children with deaf-blindness in all areas of the country.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements under the *Applicable Regulations* heading, in section I of this notice.

We reference the regulations outlining the terms and conditions of an award under the *Applicable Regulations* heading, in section I of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year

award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures*: Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, provide useful products and services, and contribute to improving results for children with disabilities (States report improved ability to provide technical assistance as a result of projects and demonstrate improved results for children with disabilities)). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Dated: March 10, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–5823 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records; Employee Conduct—Government Ethics (18–09–03)

AGENCY: Office of the General Counsel, U.S. Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of an altered system of records entitled "Employee Conduct—Government Ethics (18–09–03)," last published in the **Federal Register** on June 4, 1999 (64 FR 30149–50). The Department amends this notice by: (1) Updating the categories of individuals covered by the system to include employees who are required to attend ethics training; (2) revising the categories of records in the system to exclude records covered by two government-wide executive branch Privacy Act systems of records of the Office of Government Ethics (OGE): OGE/GOVT–1 and OGE/GOVT–2 and to include records relating to compliance with ethics training requirements; (3) revising the authority for the system; (4) adding that a purpose of the system is to ensure compliance with ethics training requirements; (5) adding a new routine use to allow disclosures to the Office of Government Ethics pursuant to its oversight responsibilities; (6) revising the paragraph on storage to include electronic records; (7) revising the paragraph on safeguards to include the measures taken to protect electronic records; (8) revising the paragraph on retention and disposal to state that the records in the system will be destroyed in accordance with the National Archives and Records Administration's General Records Schedule (GRS) 25 for Ethics Program Records; and (9) adding a new paragraph on record source categories, which was inadvertently omitted from the last publication of the system of records notice.

DATES: The Department seeks comments on the altered 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 April 14, 2004.

The Department filed a report describing the revisions to the system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the United States Senate, the Chair of the Committee on Government Reform of the United States House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 9, 2004. The changes made in this notice will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on April 18, 2004 or (2) April 14, 2004, unless the system of records needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses.

ADDRESSES: Address all comments about the proposed routine uses to Karen Santoro, Ethics Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E231, Washington, DC 20202–2110. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*. You must include the term "Employee Conduct" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 6E231, 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 will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for 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: Karen Santoro. Telephone: (202) 401–8309. 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 an altered 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 a notice of a system of records in the **Federal Register** and to prepare a report to OMB, whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required 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. The report is intended to permit an evaluation of the probable or potential effect of the proposal on the privacy rights 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: *http://www.ed.gov/news/fedregister.*

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Dated: March 9, 2004.

Brian W. Jones,

General Counsel.

For the reasons discussed in the preamble, the General Counsel of the U.S. Department of Education publishes a notice of an altered system of records. The following amendments are made in the Notice of New, Amended, Altered and Deleted Systems of Records published in the **Federal Register** on June 4, 1999 (64 FR 30105–30191):

1. On page 30149, 2nd column, under the headings Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, and Purpose(s), the paragraphs are revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information about current and past Department employees (1) who have requested and/or received advice or guidance in subject matter areas relating to employee conduct, or (2) who are required to attend ethics training.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains documents and records not covered by two government-wide executive branch Privacy Act systems of records of the Office of Government Ethics (OGE): OGE/GOVT–1 and OGE/GOVT–2. These documents and records may include, but are not limited to, information relating to acceptance or offer of gifts, entertainment and favors, or outside employment; financial interests; use of government funds, property, or official information; partisan political activity; compliance with ethics training requirements; or other matters relating to employee conduct.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–521, Ethics in Government Act of 1978; Pub. L. 101–194, Ethics Reform Act of 1989, as amended; and Executive Orders 12674, 12565, and 11222, as amended.

PURPOSE(S):

The records in this system are maintained in order for the Office of the General Counsel to provide advice and guidance in subject matter areas relating to employee conduct and to ensure that employees comply with ethics requirements.

2. On page 30150, 1st column, make the following changes:

A. After the paragraph labeled "(6) *Congressional Member Disclosures*," a new paragraph is added as follows:

(7) *Office of Government Ethics Disclosure.* The Department may disclose records to the Office of Government Ethics if the disclosure is relevant to the Office of Government Ethics' review of the Department's ethics program or if the Department seeks the advice of the Office of Government Ethics on matters relating to the Department's ethics program, including, but not limited to, the program's structure and staffing, education and training, counseling or advice, public financial disclosures, confidential financial disclosures, outside employment and activities, or post employment.

B. Under the heading *Storage*, the paragraph is revised to read as follows:

STORAGE:

Paper records are kept in legal size files in filing cabinets; electronic records are kept in a database maintained and managed by the Ethics Division of the Office of the General Counsel.

3. On page 30150, 2nd column, make the following changes:

A. Under the heading *Safeguards*, the paragraph is revised to read as follows:

SAFEGUARDS:

These records are only accessible to staff of the Ethics Division of the Office of General Counsel. Paper records are kept in filing cabinets that are locked after the close of the business day, and electronic records are kept only on authorized users' computers, which are password-protected.

B. Under the heading *Retention and Disposal*, the paragraph is revised to read as follows:

RETENTION AND DISPOSAL:

The records in this system will be retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule (GRS) 25 for Ethics Program Records.

C. After the heading *Contesting Record Procedures*, a new paragraph is added to read as follows:

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who request advice and from employees and other Department records in connection with the administration of the ethics training program.

[FR Doc. 04–5676 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Inventions and Innovation Funding Opportunity Announcement

AGENCY: Golden Field Office, Department of Energy.

ACTION: Notice of Issuance of Inventions and Innovation (I&I) funding opportunity announcement.

SUMMARY: The U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy (EERE) is announcing its intention to fund a competitive grant program entitled the Inventions and Innovation (I&I) Program. The goals of the I&I Program are to improve energy efficiency through the promotion of innovative ideas and inventions that have a significant, potential energy impact and a potential, future commercial market. Innovative technologies that fit within the scope of the EERE mission and programs are of particular interest to I&I. EERE offices include: (1) Biomass Program; (2) Building Technologies Program; (3) Distributed Energy & Electric Reliability Program; (4) FreedomCAR & Vehicle Technologies Program; (5) Geothermal Technologies Program; (6) Hydrogen, Fuel Cells, & Infrastructure Technologies Program; (7) Industrial Technologies Program; (8) Solar Energy Technology Program; (9) Weatherization & Intergovernmental Program; and (10) Wind & Hydropower Technologies Program.

DOE will provide financial assistance of up to $50,000 for Category 1 projects, up to $250,000 for Category 2 projects, and up to $500,000 for up to one Category 3 project. Category 1, 2, and 3 projects fall within the "conceptual," "developmental," and "demonstration" stages of development, respectively. Grant awards cover a project period of up to one year for Category 1, two years for Category 2, and three years for Category 3.

Up to $1.6 million dollars in funding is available for Fiscal Year 2004. DOE reserves the right to fund in whole or in part any, all, or none of the proposals submitted in response to this notice.

DATES: The Funding Opportunity Announcement is expected to be issued on or about March 5, 2004. The pre-application period is expected to open on or about March 5, 2004 and close on or about March 25, 2004. The full application period is expected to open on or about May 25, 2004 and close on or about June 21, 2004.

ADDRESSES: To obtain a copy of the Announcement, interested parties should access the DOE Golden Field Office Home Page at *http://www.go.doe.gov/funding.html*, click on the word "access." The link will open the Industry Interactive Procurement System (IIPS) Web site and provide instructions on using IIPS. The Announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those Announcements issued by the Golden Field Office. DOE will not issue paper copies of the Announcement.

IIPS provides the medium for disseminating Announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application may be submitted in IIPS by the applicant or a designated representative that receives authorization from the applicant; however, the application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding contract or agreement. The applicant or the designated representative must first register in IIPS, entering their first name and last name, and then entering the company name/address of the applicant. For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Melissa Wise, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393 or via facsimile to Melissa Wise at (303) 275–4788 or electronically to *goii@go.doe.gov*.

SUPPLEMENTARY INFORMATION: Eligibility for this assistance is restricted to applications from the following: (1) Individuals that are either native-born or naturalized U.S. citizens or (2) small businesses (as defined by the Small Business Administration) that are incorporated and operating in the U.S. and that conduct at least 50% of the effort. National Laboratories are not eligible to submit applications for grant funding but may perform part of the work on a Category 3 project only. National Laboratories may not perform more than 49% of the work and payment to the labs must come from the applicants' portion of cost share, not from federal funds.

Individual inventors and very small businesses (15 or fewer employees) are especially encouraged to apply for funding.

To be considered for a Category 2 award, a bench-scale model and/or other preliminary investigations must be complete. Only Category 1 and 2 projects that conclude in a technological stage of development that meets the requirements of a Category 3, "Production-Scale Commercial Demonstration" project will be considered. The goal of the Category 3 grant is the completion of a full production-scale commercial demonstration of a completed Category 1 or 2 I&I project within the United States. To be eligible for this grant, it must be a prior Category 1 or 2 award recipient and all research and development activities must already be completed with successful test results. DOE anticipates the Category 3 award may cover a project period of up to three years. The demonstration must be conducted long enough to gather sufficient data to determine the energy and economic impacts. At the end of the project, the technology or process must be demonstrated and ready for commercialization.

More than one application may be submitted by an applicant for different innovations. However, funding will be limited to one award per applicant, per cycle. Also more than one organization may be involved in an application as long as the lead organization and lead financial assistance management responsibilities are defined. The Catalog of Federal Domestic Assistance number assigned to the I&I Program is 81.036. Cost sharing by applicants and/or cooperating participants is not required for Category 1 or 2 awards but is highly encouraged. Category 3 projects carry a 50% cost share requirement. In addition to direct financial contributions, cost sharing can include beneficial services or items such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles.

Issued in Golden, Colorado, on March 5, 2004.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 04–5752 Filed 3–12–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that

public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 1, 2004, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L268, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Board Discussion and Approval of Recommendations on the Draft Comprehensive Conservation Plan/ Environmental Impact Statement for the Rocky Flats National Wildlife Refuge.

2. Board Education Session on Groundwater Modeling.

3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on March 9, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–5753 Filed 3–12–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the "Voluntary Reporting of Greenhouse Gases," form EIA–1605 and EIA–1605 EZ (short form) to the Office of Management and Budget (OMB) for review and a one-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by April 14, 2004. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202) 395–7285) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202) 287–1705 or e-mail *grace.sutherland@eia.doe.gov* is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1605 and 1605EZ, "Voluntary Reporting of Greenhouse Gases"

2. Energy Information Administration

3. OMB Number 1905–0194

4. One-year extension to an existing approved request

5. Voluntary

6. EIA–1605 and EIA–1605EZ forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and carbon fixation. Data are used to establish a publicly available database. Respondents are participants in a domestic or foreign activity that either reduces greenhouse gas emissions or increases sequestration.

7. Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

8. 7,940 hours (230 respondents × 1 response per year × 34.5 hours per response).

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC January 28, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–5754 Filed 3–12–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0225; FRL–7636–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Mobile Source Emission Factors: Populations, Usage and Emissions of Diesel Nonroad Equipment in EPA Region 7 (Survey), EPA ICR Number 0619.11, OMB Control Number 2060–0078

AGENCY: Environmental Protection Agency.

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 a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 14, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0225 to (1) EPA online using EDOCKET (our preferred method), by email to *http://www.epa.gov/edocket*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, mailcode 6102T, 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: James Warila, Office of Transportation and Air Quality, mailcode ASD, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48105; telephone number: 734–214–4951; fax number: 734–214–4821; email address: *warila.james@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 September 22, 2000, (65 FR 83008), 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. OAR–2003–0225, which is available for public viewing at the Air and Radiation 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 Air and Radiation Docket is (202) 566–1742. 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," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Mobile Source Emission Factors: Populations, Usage and Emissions of Diesel Nonroad Equipment in EPA Region 7 (Survey)

Abstract: In response to recommendations from the National Research Council of the National Academy of Sciences, EPA is initiating a systematic data collection designed to improve the methods and tools used by the Agency to estimate emissions from nonroad equipment. Data to be collected include populations, usage rates (activity) and "in-use" or "real-world" emission rates.

The collection is a survey, to be conducted by the Office of Transportation and Air Quality (OTAQ) in the Office of Air and Radiation (OAR). Development of rapid in-use instrumentation promises to substantially reduce the cost of emissions measurement for nonroad equipment. This study will combine rapid in-use measurement capability with statistical survey design to improve the representation of nonroad engine populations. The goal to conduct a pilot survey designed to develop methods and protocols needed to collect data on populations, activity and in-use emissions of diesel nonroad equipment. Response to the survey is voluntary.

The target population includes nonroad equipment used by commercial establishments in the Mining, Construction, Manufacturing and Agricultural sectors. The study area for this collection will be EPA Region 7. To estimate the prevalence of equipment ownership in the target sectors, 1,540 establishments will be requested to respond to brief interviews regarding their equipment ownership and use. The total sample size for instrumented measurement is 360 equipment pieces, with 150 and 210 pieces targeted for emissions and usage measurement, respectively.

Emissions and usage will be measured using portable on-board electronic instrumentation. Emissions instrumentation will measure carbon dioxide (CO_2) and several air pollutants on an instantaneous basis during normal operation over a period of one to three days. Air pollutants to be measured include carbon monoxide (CO), total hydrocarbons (THC), oxides of nitrogen (NO_X) and particulate matter (PM). The usage instrument will measure engine on/off over a period of approximately three months.

Data will be collected during normal operation at the respondents' facilities or work sites. Following quality-assurance and analysis, the data will be stored in OTAQ's Mobile Source Observation Database. The information collection will involve 1,900 respondents at a cost of $91,900.

The legislative basis for gathering this data is section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to "conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution" and "conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *."

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 annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.42 to 0.75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Commercial establishments in the Mining, Construction, Manufacturing and Agricultural Sectors (NAICS 21, 23, 31–33, and 111, respectively).

Estimated Number of Respondents: 1,900.

Frequency of Response: one-time event.

Estimated Total Annual Hour Burden: 1,060.

Estimated Total Annual Cost: $91,900, includes $0 annualized capital or O&M costs.

Dated: March 4, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–5764 Filed 3–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0006, FRL–7636–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Innovation Database Information Collection, EPA ICR Number 2128.01

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 EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 1, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OA–2003–0006, 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, OEI Docket, 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marc Olender, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2238; fax number: (202) 566–2200; e-mail address: *olender.marc@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2003–0006, which is available for public viewing at the OEI 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 OEI 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 obtain a copy of the draft collection of information, 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 within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are State regulatory agencies.

Title: State Input to the EPA Innovation Catalogue.

Abstract: The Innovation Catalogue is a searchable Web-based database containing over 500 innovative projects from across the Environmental Protection Agency (EPA), and is hosted on the EPA's Intranet. The Innovation Catalogue is one of the Agency's tools for communicating and fostering the transfer of our innovation experience. It has been used to identify pollution prevention case study candidates, and has also proven to be a valuable means of providing quarterly reports on the Agency's innovation activities and accomplishments to the Administrator. The Innovation Catalogue has expanded EPA's professional tool box for solving environmental problems innovatively.

Thus far, the Catalogue has only been accessible to EPA staff for viewing and editing via a password-protected Intranet site. However, the Agency is proposing to make the Catalogue accessible to State government staff. State staff who are interested in accessing the database could request a password, after which they would be granted access to the Catalogue. Once registered, they would be given viewing and submittal access. State officials with passwords would be able to contribute innovations of their own for publication in the database, and in addition, they would be granted editing access to projects that they submitted.

State involvement with the Innovation Catalogue would be voluntary. EPA would work with State organizations and State trade associations, such as the Environmental Council of States, to publicize the availability of the database. EPA would encourage voluntary State involvement in the database by asking state environmental agencies to contribute their own innovative projects for consideration and publication in the

Innovation Catalogue. State staffers would input their innovative projects directly into the Catalogue using a predefined template. State input into the Catalogue would enrich the database with a larger and more diverse range of innovative projects. By sharing information on innovative approaches between the EPA and its State partners, both EPA and the States would benefit from using more cost-effective and creative techniques of environmental protection.

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.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Burden Statement: EPA estimates that each State will submit 15 entries to the Innovation Catalogue per year. We have derived this estimate from our discussions with Innovation Coordinators in the Regions. Each entry will take approximately one hour. We anticipate that each State will revise and update its entry twice a year, which will also take an hour. Average State salaries were obtained from the the Bureau of Labor Statistics' *Employer Costs for Employee Compensation* (ECEC) data from December 2002. The calculations summarizing these estimates follow in the table below.

TABLE 1.1.—SUMMARY OF ANNUALIZED RESPONDENT BURDEN, JANUARY 1, 2004–DECEMBER 31, 2007

	Facility/state burden hours [1]	Facility burden cost [2]	Total burden hours [3]	Total burden cost
State Submissions to the Catalogue				
New Submissions for Consideration	30	$37.47	1500	$56,205.00
Revising Published Submissions	30	37.47	1500	56,205.00
Summary:				
Total Respondent Burden, 2004–2007	180	37.47	9000	337,230.00
Annualized Total Respondent Burden	60	37.47	3000	112,410.00

[1] EPA estimates burden hours by assuming each State will submit 15 new entries per year, with each new submission requiring 2 hours. EPA estimates that each State will submit a revision of each submission every six months, and revisions will only require 1 hour.

[2] EPA estimates hourly non-EPA labor rates from several sources. For State Government and Respondent wages, EPA uses the Bureau of Labor Statistics' *Employer Costs for Employee Compensation* (ECEC) data from December 2002 (*http://www.bls.gov/news.release/ecec.t04.htm* and *http://www.bls.gov/news.release/ecec.t12.htm*, respectively). Consistent with the Office of Management and Budget's 1999 guidance *Estimating Paperwork Burden* (*http://www.whitehouse.gov/omb/fedreg/5cfr1320.html*), EPA uses an adjusted labor rate reflective of benefits and overhead costs.

[3] Calculated by multiplying the Facility Burden Hours by the Number of Facilities/States.

[4] Calculated by multiplying the Total Burden Hours by the Facility Burden Cost.

Dated: March 1, 2004.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 04–5765 Filed 3–12–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on April 1–2, 2004

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., chairman) will hold its sixteenth meeting, at which, among other things, it will release a report on the regulation of biotechnologies touching the beginnings of human life; continue its discussion of neuroethics; and begin discussing ethical issues relating to dementia and end-of-life care. Guest presenters will include neuroscientists Fred Gage of the Salk Institute; Thomas Jessell of Columbia University; and Jerome Kagan and Elizabeth Spelke of Harvard University. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: embryo research, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, aging retardation, lifespan-extension, and organ procurement for transplantation. Publications issued by the Council to date include: Human Cloning and Human Dignity: An Ethical Inquiry (July 2002); Beyond Therapy: Biotechnology and the Pursuit of Happiness (October 2003); Being Human: Readings from the President's Council on Bioethics (December 2003); and Monitoring Stem Cell Research (January 2004).

DATES: The meeting will take place Thursday, April 1, 2004, from 9 a.m. to 5:15 p.m. e.t.; and Friday, April 2, 2004, from 8:30 a.m. to 12:30 p.m. e.t.

ADDRESSES: Hyatt Regency Crystal City at Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov.*

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 a.m., on Friday, April 2. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC

20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

Dated: March 8, 2004.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 04–5714 Filed 3–12–04; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; AoA Uniform Project Description

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 14, 2004.

ADDRESSES: Submit written comments on the collection of information by fax (202) 395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Margaret Tolson, (202) 357–3440, *margaret.tolson@aoa.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The proposed collection relates to discretionary grant applicants' project description and budget justification information necessary to issue AoA discretionary grants. The information is used to evaluate if applications are eligible for funding and further used during the grant review process. The respondents are organizations that choose to apply for an AoA discretionary grant. AoA estimates the burden of this collection of information as follows: 500 responses/year; 5,000 hours/year.

Dated: March 10, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–5791 Filed 3–12–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project—Brownsville-Matamoros Sister City Project (BMSCP) for Women's Health—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The Brownsville-Matamoros Sister City Project for Women's Health is a proposed pilot project in which a standardized approach to surveillance will be established in selected hospitals that provide obstetric services in Brownsville and Harlingen, Texas, U.S., and Matamoros, Tamaulipas, Mexico.

During 2003 and 2004, CDC provided funds to support staff from CDC, NCDDPHP, the University of Texas at Brownsville/Texas Southmost College, the University of Texas—Houston School of Public Health, and Helix, Inc. These funds were used to disseminate information or inform health practitioners and public health officials at the local, state and national level about the BMSCP, implement development of the methodology and data collection instruments for the pilot phase of data collection described herein, conduct discussion groups (currently ongoing) to determine the appropriate language for interviews, and to determine the acceptability of topic areas to be covered in the interviews, and the appropriateness of the proposed methodology.

The purpose of the proposed data collection is to test a standardized approach for hospital-based surveillance of women's health and chronic disease issues in the US-Mexico border communities of Brownsville and Harlingen, Texas, and Matamoros, Tamaulipas, Mexico. The primary method of data collection will be in-person interviews with women who give birth to live infants; which may be supplemented by abstracting additional data from the medical records of respondents and birth certificates of their infants. The majority of interviews will take place after delivery but prior to hospital discharge.

Women who are selected for the pilot project but discharged prior to interview will be interviewed at the clinic they attend for postnatal care. The questionnaire will include questions to help monitor the occurrence of and risk factors for adolescent pregnancy, infant mortality, and gestational diabetes, as well as questions about physical activity and dietary practices, cervical cancer screening history, and knowledge of HIV transmission and prevention. These issues have been established as priorities by the U.S.-Mexico Binational Health Commission (USMBHC) and are included in the Healthy Border 2010 objectives of the USMBHC. This approach to surveillance through which data will be collected using a standardized and uniform methodology on the U.S. and Mexican sides of the US-Mexico border is needed.

Most data collection systems currently in place have been designed to collect information from either U.S. or Mexican residents, and the methodology of such systems is not comparable. Persons living along the US-Mexico border frequently cross the border in both directions for healthcare, work, and social reasons, they represent a unique population with respect to public health needs and public health

program access. This pilot project will be conducted during fiscal year 2005. If successful, this surveillance system may serve as a model for surveillance in other border communities. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
U.S.	400	1	30/60	200
Mexico	400	1	30/60	200
Total				400

Dated: March 5, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5728 Filed 3–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project—Vital Statistics Training Application, OMB No. 0920–0217—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). In the United States, legal authority for the registration of vital events, *i.e.*, births, deaths, marriages, divorces, fetal deaths, and induced terminations of pregnancy, resides individually with the States (as well as cities in the case of New York City and Washington, DC) and Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. These governmental entities are the full legal proprietors of vital records and the information contained therein. As a result of this State authority, the collection of registration-based vital statistics at the national level, referred to as the U.S. National Vital Statistics System (NVSS), depends on a cooperative relationship between the States and the Federal government. This data collection, authorized by 42 U.S.C. 242k, has been conducted by NCHS since it was created in 1960.

NCHS assists in achieving the comparability needed for combining data from all States into national statistics, by conducting a training program for State and local vital statistics staff to assist in developing expertise in all aspects of vital registration and vital statistics. The training offered under this program includes courses for registration staff, statisticians, and coding specialists, all designed to bring about a high degree of uniformity and quality in the data provided by the States. This training program is authorized by 42 U.S.C. 242b, section 304(a). In order to offer the types of training that would be most useful to vital registration staff members, NCHS requests information from State and local vital registration officials about their projected needs for training. NCHS also asks individual candidates for training to submit an application form containing name, address, occupation, work experience, education, and previous training. These data enable NCHS to determine those individuals whose needs can best be met through the available training resources. There is no cost to respondents in providing these data.

Respondents	Number of respondents	Number of responses/Respondents	Average burden/response (in hrs.)	Total burden hours
State, local, and Territory Registration Officials	57	1	20/60	19
Training applicants	100	1	15/60	25
Total				44

Dated: March 5, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5729 Filed 3–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Understanding Family-based Detection as a Strategy for Early Diagnosis of Hemochromotosis—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Hemochromatosis is a disease that occurs as a result of excess iron accumulation in the tissues and organs. The majority of hemochromatosis cases are due to HFE gene mutations. Early hemochromatosis symptoms are nonspecific and are often overlooked by physicians or mistaken for other conditions. Fortunately, hemochromatosis can be detected with simple blood tests. When treatment by therapeutic phlebotomy is instituted early in the course of the disease, the many severe complications associated with hemochromatosis (*e.g.*, cirrhosis of the liver, liver cancer, cardiomyopathy, and heart failure) can be effectively prevented.

Hemochromatosis is a genetic disease, and blood relatives of hemochromatosis patients are at increased risk. The public health strategy for early detection of hereditary hemochromatosis is making patient family members aware of their increased risk and encouraging them to seek voluntary diagnostic testing ("family-based detection"). CDC wants to evaluate family-based detection as a strategy to identify people with hemochromatosis. The proposed research project will examine the effectiveness of and barriers to the use of family-based detection as a public health strategy to reduce morbidity and mortality from genetic diseases, and in particular, hemochromatosis.

To understand the effectiveness of family-based detection for hemochromatosis the following will be evaluated:

- Barriers and motivators to family-based detection as a strategy for early diagnosis of hemochromatosis. (Early detection facilitates early treatment to slow the course of disease.)
- How physicians communicate with patients about the importance of family-based detection and the need for patients to encourage biological siblings to seek testing.
- Factors that foster good communication among biological siblings about the importance of seeking medical testing by those at increased risk of hemochromatosis.
- Factors that affect the willingness of biological siblings to take action to seek out and receive testing for hemochromatosis.
- Information and key messages that motivate patients to advise their biological siblings about their increased risk for hemochromatosis and need for diagnostic testing.
- How physicians use medical histories to identify people who should be tested because they have a relative with hemochromatosis.

The proposed research to be undertaken by CDC will incorporate several types of qualitative data collection: structured one-on-one interviews, triads (small focus groups) and traditional focus groups. Subjects will include hemochromatosis patients, biological siblings of patients, and physicians. Topics to be explored with each of the three subject groups include the knowledge, attitudes, perceptions, and behaviors related to family-based detection.

Patients will be recruited in Boston and Chicago from the following places (where hemochromatosis patients often undergo treatment by therapeutic phlebotomy):

- Blood banks
- Hospital laboratories
- Other health care provider facilities

Siblings will be recruited either through the patients or by self-referral. Health care providers will be recruited through publicly available lists of physicians, or recommendations from project staff, patients, biological siblings, blood banks, hospital laboratories, hemochromatosis organizations, and health care providers knowledgeable about hemochromatosis. Information about the study will be available on the CDC Web site. Hemochromatosis organizations will be invited to notify their members about this research. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average response per respondent (in hours)	Total burden (in hours)
Individual Interviews with Patients and Siblings	15	1	2	30
Individual Interviews with Health Care Providers	18	1	2	36
Triads	30	1	2	60
Focus Groups	80	1	2	160
Total				286

Dated: March 8, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5738 Filed 3–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–04–33]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project—Community Guide Surveillance and Evaluation Survey—New—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

The Community Guide Surveillance and Evaluation Survey will be used to collect information about the degree to which segments of the target audience for the Guide to Community Preventive Services (Community Guide) is aware of and using findings in public health planning decisions. Public health practitioners, including state and local health officials and faculty from schools of public health throughout the United States and its territories, will be invited to participate. The Community Guide is based on systematic reviews of published evidence of effectiveness of selected population based interventions across a range of health topics. The data from this survey will be used to assess familiarity with, understanding of use, and dissemination of findings from the Community Guide. The results of this study will be used by the independent Task Force on Community Preventive Services and staff supporting the Task Force from the Centers for Disease Control and Prevention to improve dissemination and use of Community Guide reviews and recommendations. The sample will include 9 people from each of the 56 states and territories, including Puerto Rico, Guam, U.S. Virgin Islands, and the Northern Mariana Islands, for a total sample size of 504 people. The total annual burden estimate is 101 hours. The survey will be administered annually, contingent on availability of funds, through a Web-based format.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public Health Practitioners	504	1	12/60	101
Total				101

Dated: March 8, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5739 Filed 3–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04074]

Achieve and Sustain Measles, Rubella, and Congenital Rubella Syndrome (CRS) Elimination in the Americas Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to achieve and sustain measles, rubella, and congenital rubella syndrome (CRS) elimination in the Americas. The Catalog of Federal Domestic Assistance number for this program is 93.185.

B. Eligible Applicant

Assistance will be provided only to Pan American Health Organization (PAHO). PAHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

1. PAHO has the lead responsibility among the United Nations organizations for implementing activities to achieve the Pan American Sanitary Conference resolution of 1994 calling for the regional elimination of measles, and the year 2003 resolution calling for the elimination of rubella and CRS by year 2010. PAHO is the only organization in the Americas with a regional mandate for the control and prevention of vaccine-preventable diseases (VPD).

2. The proposed program is strongly supportive of, and directly related to, the achievement of PAHO and CDC/National Immunization Program objectives for the control and prevention of VPDs with emphasis on CDC's objectives.

3. PAHO, in collaboration with the Governments of Brazil, Canada, Netherlands, Spain, USAID, March of Dimes, Sabin Institute, American Red Cross and CDC, are partners in an international effort to increase support and visibility for both the measles and rubella elimination initiatives.

C. Funding

Approximately $6,000,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before May 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Leo F. Weakland, Project Officer, Global Immunization Division, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, Atlanta, Georgia 30333, telephone: 404–639–8252, E-mail Address: *lfwo@cdc.gov.*

Dated: March 9, 2004.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5740 Filed 3–12–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0393]

Determination That DIAZEPAM Injection United States Pharmacopeia (5 Milligrams/Milliliter in a 1-Milliliter Container) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DIAZEPAM Injection United States Pharmacopeia (USP) (5 milligrams/milliliter (mg/mL) in a 1-mL container) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for DIAZEPAM Injection USP (5 mg/mL in a 1-mL container).

FOR FURTHER INFORMATION CONTACT: Elizabeth Sadove, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness §314.162 (21 CFR 314.162).

Under § 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

DIAZEPAM Injection USP (5 mg/mL in a 1-mL container) is the subject of approved ANDA 72–079 held by Abbott Laboratories, Inc. (Abbott). DIAZEPAM Injection USP (5 mg/mL in a 1-mL container) is indicated for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. PharmaForce, Inc., submitted a citizen petition dated August 25, 2003 (Docket No. 2003P–0393/CP1), under 21 CFR 10.30, requesting that the agency determine whether DIAZEPAM Injection USP (5 mg/mL, 1 mL) was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that DIAZEPAM Injection USP in a 5-mg strength (5 mg/mL in a 1–mL container) was not withdrawn from sale for reasons of safety or effectiveness. Two grounds support the agency's finding. First, DIAZEPAM Injection USP currently is being marketed in a 10-mg strength (5 mg/mL in a 2-mL container). Adverse drug events would be less likely with the discontinued lower dose than the currently marketed higher dose. In addition, by using only a portion of the amount currently marketed, the 5-mg strength in question still can be obtained. Second, the lower 5-mg strength of DIAZEPAM Injection USP would be considered an effective dosage form because it is still within the dosing range. The usual recommended dose for older children and adults ranges from 2 to 20 mg intramuscularly or intraveneously, depending on the indication and its severity.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, DIAZEPAM Injection, USP (5 mg/mL in a 1-mL container) was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list DIAZEPAM Injection USP (5 mg/mL in a 1-mL container) in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to DIAZEPAM Injection USP (5 mg/mL, 1 mL) may be approved by the agency.

Dated: March 8, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5756 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0419]

Determination of Regulatory Review Period for Purposes of Patent Extension; IPRIVASK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IPRIVASK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit

electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product IPRIVASK (desirudin). IPRIVASK is indicated for the prophylaxis of deep vein thrombosis, which may lead to pulmonary embolism, in patients undergoing voluntary hip replacement surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for IPRIVASK (U.S. Patent No. 4,745,177) from Novartis Corp. and UCP Gen-Pharma AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of IPRIVASK represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for IPRIVASK is 4,707 days. Of this time, 3,696 days occurred during the testing phase of the regulatory review period, while 1,011 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 17, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 17, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 28, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for IPRIVASK (NDA 21ndash;271) was initially submitted on June 28, 2000.

3. *The date the application was approved*: April 4, 2003. FDA has verified the applicant's claim that NDA 21ndash;271 was approved on April 4, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 14, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 13, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–5703 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0406]

Determination of Regulatory Review Period for Purposes of Patent Extension; FABRAZYME

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FABRAZYME and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written or electronic comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the

amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product FABRAZYME (agalsidase beta). FABRAZYME is indicated for use in patients with Fabry disease. FABRAZYME reduces globotriaosylceramide (GL–3) deposition in capillary endothelium of the kidney and certain other cell types. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FABRAZYME (U.S. Patent No. 5,356,804) from Genzyme, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of FABRAZYME represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FABRAZYME is 1,843 days. Of this time, 807 days occurred during the testing phase of the regulatory review period, while 1,036 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: April 9, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 9, 1998.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: June 23, 2000. FDA has verified the applicant's claim that the product license application (PLA) for FABRAZYME (PLA 103979/0) was initially submitted on June 23, 2000.

3. *The date the application was approved*: April 24, 2003. FDA has verified the applicant's claim that PLA 103979/0 was approved on April 24, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension. this applicant seeks 1,438 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 14, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 13, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–5760 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2003E–0449, 2003E–0448, and 2003E–0411]

Determination of Regulatory Review Period for Purposes of Patent Extension; FACTIVE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FACTIVE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of three applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of three patents that claim that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FACTIVE (gemifloxacin mesylate). FACTIVE is indicated for the treatment of infections caused by susceptible strains of certain designated microorganisms in particular conditions. Subsequent to this approval, the Patent and Trademark Office received three patent term restoration applications for FACTIVE (U.S. Patent Nos. 5.962,468, 5,776,944, and 5,633,262) from LG Life Sciences, and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FACTIVE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FACTIVE is 2,038 days. Of this time, 832 days occurred during the testing phase of the regulatory review period, while 1,206 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 6, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 6, 1997.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 16, 1999. The applicant claims December 15, 1999, as the date the new drug application (NDA) for FACTIVE (NDA 21–158) was initially submitted. However, FDA records indicate that NDA 21–158 was submitted on December 16, 1999.

3. *The date the application was approved*: April 4, 2003. FDA has verified the applicant's claim that NDA 21–158 was approved on April 4, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In each of the three applications for patent term extension, this applicant seeks 659 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 14, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 13, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–5759 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0416]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZELNORM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZELNORM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZELNORM (tegaserod maleate). ZELNORM is indicated for the short-term treatment of women with irritable bowel syndrome whose primary bowel symptom is constipation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration

application for ZELNORM (U.S. Patent No. 5,510,353) from Novartis Pharmaceuticals, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZELNORM represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZELNORM is 2,826 days. Of this time, 1,931 days occurred during the testing phase of the regulatory review period, while 895 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 30, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 30, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: February 11, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for ZELNORM (NDA 21–200) was initially submitted on February 11, 2000.

3. *The date the application was approved*: July 24, 2002. FDA has verified the applicant's claim that NDA 21–200 was approved on July 24, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,888 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 14, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 13, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 19, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–5758 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0170]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Commitment Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is required, under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), to report annually in the **Federal Register** on the status of postmarketing study commitments made by sponsors of approved drug and biological products. This is the agency's report on the status of the studies sponsors have agreed to or are required to conduct.

FOR FURTHER INFORMATION CONTACT:

Beth Duvall-Miller, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–20), 5600 Fishers Lane, Rockville, MD 20857, 301–594–3937; or

Robert Yetter, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–25), 1400 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

Section 130(a) of the Modernization Act (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision requiring reports of certain postmarketing studies (section 506B of the act (21 U.S.C. 356b)) for human drug and biological products. Section 506B of the act provides FDA with additional authority to monitor the progress of a postmarketing study commitment that an applicant has been required or has agreed to conduct by requiring the applicant to submit a report annually providing information on the status of the postmarketing study commitment. This report must also include reasons, if any, for failure to complete the commitment.

On December 1, 1999 (64 FR 67207), FDA published a proposed rule providing a framework for the content and format of the annual progress report. The proposed rule also clarified the scope of the reporting requirement and the timing for submission of the annual progress reports. The final rule, published on October 30, 2000 (65 FR 64607), modified annual report requirements for new drug applications (NDA) and abbreviated new drug applications (ANDA) by revising § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLA) by establishing § 601.70 (21 CFR 601.70). These regulations became effective on April 30, 2001. The regulations apply only to human drug and biological products. They do not apply to animal drug or to biological products that also meet the definition of a medical device.

Sections 314.81(b)(2)(vii) and 601.70 apply to postmarketing commitments made on or before enactment of the Modernization Act (November 21, 1997) as well as those made after that date. Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drug and biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study that is required by FDA (e.g., accelerated approval clinical benefit studies) or that they have committed to conduct either at the time of approval or after approval of their NDA, ANDA, or BLA. The status of other types of postmarketing commitments (e.g., those concerning chemistry, manufacturing, production controls, and studies conducted on an applicant's own initiative) are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70, and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii).

According to the regulations, once a postmarketing study commitment has been made, an applicant must report on the progress of the commitment on the anniversary of the product's approval until the postmarketing study commitment is completed or terminated, and FDA determines that the postmarketing study commitment has been fulfilled or that the postmarketing study commitment is either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the postmarketing study commitment, a schedule for completing the study commitment, and a characterization of the current status of the study commitment. The report must also provide an explanation of the postmarketing study commitment's status by describing briefly the postmarketing study commitment's progress. A postmarketing study commitment schedule is expected to include the actual or projected dates for the following: (1) Submission of the study protocol to FDA, (2) completion of patient accrual or initiation of an animal study, (3) completion of the study, and (4) submission of the final study report to FDA. The postmarketing study commitment status must be described in the annual report according to the following definitions:

- Pending: The study has not been initiated, but does not meet the criterion for delayed;
- Ongoing: The study is proceeding according to or ahead of the original schedule;
- Delayed: The study is behind the original schedule;
- Terminated: The study was ended before completion, but a final study report has not been submitted to FDA; or
- Submitted: The study has been completed or terminated, and a final study report has been submitted to FDA.

Databases containing information on postmarketing study commitments are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). Information in this report covers any postmarketing study commitment that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including those required (e.g., to demonstrate clinical benefit of a product following accelerated approval) and those agreed to with the applicant. Information summarized in this report includes: (1) The number of applicants with open (uncompleted) postmarketing commitments; (2) the number of open postmarketing commitments; (3) the status of open postmarketing commitments as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports; (4) the status of concluded postmarketing studies as determined by FDA; and (5) the number of open postmarketing commitments for which FDA did not receive an annual report.

Additional information about postmarketing study commitments made by sponsors to CDER and CBER are provided on FDA's Web site at *http://www.fda.gov/cder*. Like this notice, the site does not list postmarketing study commitments containing proprietary information. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. The information currently available on the Web site includes only postmarketing study commitments made since January 1, 1991. The numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site. This notice incorporates totals for all postmarketing study commitments in the FDA databases, including those made prior to 1991 as well as those undergoing review for accuracy. The report in this notice will be updated annually while the Web site will be updated quarterly (in April, July, October, and January).

II. Summary of Information From Postmarketing Study Progress Reports

This report summarizes the status of postmarketing commitments as of September 30, 2003. If a commitment did not have a schedule or a postmarketing progress report was not received, the commitment is categorized according to the most recent information available to the agency.

Data in table 1 are numerical summaries generated from FDA databases. The data are broken out according to application type (NDAs/ANDAs or BLAs).

TABLE 1.—SUMMARY OF POSTMARKETING STUDY COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2003)

	NDAs/ANDAs (% of Total)	BLAs (% of Total)
Applicants with open postmarketing commitments	122	48
Number of open postmarketing commitments	1,338	278
Status of open postmarketing commitments		
• Pending	864 (65%)	69 (25%)
• Ongoing	268 (20%)	108 (39%)
• Delayed	21 (2%)	32 (12%)
• Terminated	5 (0.4%)	5 (2%)
• Submitted	180 (13%)	64 (23%)
Concluded studies (October 1, 2002, through September 30, 2003)	79	69
• Commitment met	74 (94%)	62 (90%)
• Commitment not met	0 (0%)	1 (1%)
• Study no longer needed or feasible	5 (6%)	6 (9%)
Open postmarketing commitments with annual report due but not received	22 (6%)	35 (17%)

Dated: March 3, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5757 Filed 3–12–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Partner and Customer Satisfaction Surveys

SUMMARY: Under the provisions of section 3506(c)(2)(A) (of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Center for Scientific Review (CSR), National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 3, 2003, page 62304 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Customer Satisfaction Surveys. *Type of Information Collection Request:* Reinstatement. *Need and Use of Information Collection:* The information collected in these surveys will be used by the Center for Scientific Review management and personnel: (1) To assess the quality of the modified operations and processes now used by CSR to review grant applications; (2) to assess the quality of service provided by CSR to our customers; (3) to examine and assess the effectiveness of the reorganization and reconfiguration of the peer review study committees based on customer input; (4) to develop new modes of operation based on customer need and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The survey for customers, *i.e.*, past and present grant applicants, is generic, but will have slight variations tailored to the scientific subject category of each major Integrated Review Group (IRG). The next major reorganized IRGs to be evaluated consist of the Behavioral and Social Sciences peer review study sections. Surveys will be collected via Internet. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, organization of, and services provided by the Center.

Frequency of Response: The participants will respond once, unless there is a compelling reason for a subsequent survey.

Affected Public: Universities, not-for-profit institutions, business or other for-profit, small businesses and organizations, and individuals. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: It is estimated that the survey form will take 20 minutes to complete. The estimated annual cost burden for respondents for each year for which the generic clearance is requested is $16,000 for FY 2004, $13,333 for FY 2005, $18,667 for FY 2006, and $24,000 for FY 2007. Thus, the combined total FY 2004–2007 potential hour burden on the respondents is estimated to be 1,800 hours for 5,400 respondents for all surveys which would be conducted under this generic clearance. If all planned surveys are conducted, the total four-year cost to respondents is estimated to be $72,000. Respondents should incur no additional costs. There will be dissemination and analysis costs for the survey originators. There are no capital, operating, or maintenance costs to report.

REQUESTS FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the CSR, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond while maintaining their anonymity, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact: Karl F. Malik, Ph.D., Assistant to the Deputy Director, Office of the Director, Center for Scientific Review, National Institutes of Health, Rockledge II, Rm 3016, 6701 Rockledge Drive, Bethesda, MD 20814–9692, or call non-toll free: 301–435–1114, or e-mail your request or comments, including your address to: *malikk@csr.nih.gov.*

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Brent Stanfield,

Acting Director, Center for Scientific Review, National Institutes of Health.

[FR Doc. 04–5814 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Intent To Prepare an Environmental Impact Statement for the Galveston National Laboratory for Biodefense and Emerging Infectious Diseases Research Facility in Galveston, TX

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notice of intent to prepare an environmental impact statement for the Galveston National Laboratory for Biodefense and Emerging Infectious Diseases Research facility in Galveston, TX.

SUMMARY: The Department of Health and Human Services (DHHS), National Institutes of Health (NIH), announces its intent to prepare an environmental impact statement (EIS) to evaluate a proposed new National Laboratory for Biodefense and Emerging Infectious Diseases Research facility in Galveston, TX. This EIS is being prepared and considered in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, regulations of the President's

Council on Environmental Quality (40 CFR parts 1500–1508), and NEPA Compliance Procedures of the DHHS General Administration Manual, Part 30 (Environmental Protection) February 25, 2000.

Cooperating Agencies: There are not cooperating agencies for this project.

SUPPLEMENTARY INFORMATION: The National Institute of Allergy and Infectious Diseases (NIAID), a component of the NIH, conducts and supports research on infectious diseases and the human immune system. Its resources and expertise have been applied to studying emerging infectious diseases such as SARS, West Nile virus and Lyme disease and organisms that might be used as agents of bioterrorism such as anthrax and tularemia. Knowledge of how these organisms cause disease and the response of the immune system to these organisms is desperately needed. This knowledge will be used to develop new and improved diagnostic tests, vaccines, and therapies to protect civilians.

Since fall 2001, NIAID has greatly accelerated its biodefense research program. Achievement of its research goals requires the construction and certification of biological containment laboratories with facilities and procedures for handling potentially lethal infectious agents. Equally important is the need to minimize potential threats from infectious agents to laboratory personnel working within these facilities and to adjacent communities. The Federal Government has awarded a grant in the amount of $110 million to partially fund the Galveston National Laboratory for Biodefense and Emerging Infectious Diseases Research in Galveston, TX as a crucial element of this NIH initiative.

This proposed action is the funding of the construction of the Galveston National Laboratory for Biodefense and Emerging Infectious Diseases Research facilities in Galveston, TX, a new building comprised of laboratories designed and constructed to Biosafety Levels –2, –3, and –4 standards that will allow the safe conduct of biomedical research concerning emerging infectious diseases including agents of bioterror. The proposed new facility will also contain administrative support offices. It will occupy approximately 1 acre on the campus of the University of Texas Medical Branch at Galveston in Galveston, TX, and will be owned and operated by the university in support of NIAID's Biodefense Research Agenda. The laboratory will also be prepared and available to assist national, state and local public health efforts in the event of a bioterrorism emergency.

Significant issues to be analyzed in the EIS will include safety of laboratory operations; public health and safety; handling, collection, treatment, and disposal of biomedical research waste related to the proposal; and analysis of other risks, as well as concerns for pollution prevention and impacts of the proposed action on air quality, biological resources, cultural resources, water resources, land use, and socioeconomic resources. The No Action alternative under which the new facility would not be built will also be considered. Additional alternatives may be identified during the Scoping Process.

Public Participation: The DHHS will invite full public participation to promote open communication and better decision-making. All interested persons and organizations, including minority, low income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

To ensure that the full range of issues related to the proposed action and the scope of this EIS are addressed, oral and written comments are invited from all interested parties, including appropriate Federal, state, and local agencies and private organizations and citizens. Pursuant to this, a Public Scoping meeting will be held on Wednesday, March 31, 2004 from 6 to 8 p.m. in the Mainsail Room, second floor conference center of the San Luis Hotel, 5222 Seawall Boulevard, Galveston, TX.

This Notice of Intent initiates the scoping process that guides the development of the EIS. The DHHS invites written comments and suggestions on the proposed actions, including any issues to consider, as well as any concerns relevant to the analysis. Comments and questions should be directed to the address listed below and should be postmarked no later than May 15, 2004. Additional formal opportunities for pubic participation after the Pubic Scoping are tentatively scheduled as follows:

Review and comment on Draft EIS (including a public meeting): Summer, 2004.

Review of Final EIS: Fall, 2004.

Notices of availability for the Draft EIS, Final EIS and Record of Decision will be provided through direct mail, the Federal Register, and other media. Notification also will be sent to federal, state, and local agencies and persons and organizations that submit comments or questions. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for public distribution of meeting announcements and associated documents.

FOR FURTHER INFORMATION CONTACT: Valerie Nottingham, Chief, Environmental Quality Branch, Division of Environmental Protection, Office of Research Facilities, National Institutes of Health, DHHS, B13/2W64, Bethesda, MD 20892; by telephone (301) 496–7775; fax (301) 480–8056; or e-mail *nottingv@ors.od.nih.gov.*

Dated: March 9, 2004.

Robert Ostrowski,

Scientific Resource Manager, National Institutes of Health.

[FR Doc. 04–5785 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: April 8–9, 2004.

Time: 9 a.m. to 12 p.m.

Agenda: A Report of the Director addressing OAR initiatives. The meeting will focus on current progress and scope of HIV/AIDS vaccine research, development, and clinical testing.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 6C10, Bethesda, MD 20892.

Contact Person: Jack Whitescarver, Director, Office of AIDS Research, OD, National Institutes of Health, 9000 Rockville Pike, Building 2, Room 4E14, Bethesda, MD 20892, (301) 496–0357.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/od/oar/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

Any member of the public interested in presenting oral comments to the committee

may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5806 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the Director's Council of Public Representatives.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives; COPR Agenda Subcommittee.

Date: March 18, 2004.

Time: 3:30 p.m. to 5 p.m.

Agenda: Ideas and information will be presented to COPR members to get the Council's ideas and final decisions on the April 2004 meeting agenda to be approved by the NIH Director. The group will discuss administrative business, future agenda items, topics of importance, and specific items for the April meeting, such as, public trust and a briefing by the workgroup on public input and participation.

Place: National Institutes of Health, Building 2, Conference Room 1E28, 9000 Rockville Pike, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the organizational process of scheduling availability of membership participation.

Name of Committee: Director's Council of Public Representatives, COPR Agenda Subcommittee.

Date: April 1, 2004.

Time: 3:30 p.m. to 5 p.m.

Agenda: Ideas and information will be presented to COPR members to get the Council's ideas and final decisions on the April 2004 meeting agenda to be approved by the NIH Director. The group will discuss administrative business, future agenda items, topics of importance, and specific items for the April meeting, such as, public trust and a briefing by the workgroup on public input and participation.

Place: National Institutes of Health, Building 2, Conference Room 1E28, 9000 Rockville Pike, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-governmental employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/about/publicliaison/index.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5724 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Transdisciplinary Tobacco Use Research Centers Review.

Date: June 8–10, 2004.

Time: 6:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hamilton Crowne Plaza Hotel, 14th & K Streets, NW., Washington, DC 20005.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, (301) 594–1224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5805 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Industry-Academic Partnerships for Development of Biomedical Imaging Systems & Methods that are Cancer Specific.

Date: April 20–21, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5812 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Oculomotor and Related Disorders.

Date: April 2, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5717 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Small Grants for Pilot Research (R03) Applications.

Date: March 25–26, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892, (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5723 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Estrogenic Compounds and Aging.

Date: March 15–16, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Illini Union Space, 165 Illini Union, Urbana, IL 61801.

Contact Person: Mary Nekola, PhD, Chief, Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814–9692, (301) 496–9666

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, C.elegans Genes in Aging.

Date: March 23, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301)–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Population and Economics of Aging.

Date: March 25–26, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pepper Centers.

Date: March 28–30, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alicja L. Markowska, PhD, DSC, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 402–7703. *markowska@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer Drug Discovery.

Date: March 29–30, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn City Line, 4100 Presidential Blvd, Philadelphia, PA 19131.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 402–7700, *rv23r@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Cartilage.

Date: April 8–9, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chicago Marriott Downtown, 625 South Ashland Avenue, Chicago, IL 60607.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Multiple System Aging Processes.

Date: April 28, 2004.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jon Rolf, PhD, Health Science Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/ Room 2C212, Bethesda, MD 20814.

Name of Committee: National Institute on Aging Special Emphasis Panel, Assessment of Inpatient Services.

Date: April 29, 2004.

Time: 3 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue. Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jon Rolf, PhD, Health Science Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/ Room 2C212, Bethesda, MD 20814.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5718 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel 04–34, Review of U54s.

Date: March 30, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Rebeca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892. 301–451–5096.

Name of Committee: National Institute of Dental and Craniofacial Special Emphasis Panel 04–45, Review Extramural Loan Repayment applications.

Date: April 14, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Dr., Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. 301–594–2904; *george_hausch@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 8, 2004.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5719 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel To Review Applications.

Date: April 7, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Placé: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone conference call.)

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences. P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistant Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5720 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "HIV Recombinant Program Project Review".

Date: April 5, 2004.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: B. Duane Price, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy & Infectious Diseases, DEA/NIH/DHHS, 6700B Rockledge Drive, Room 3147, Bethesda, MD 20892, 302–451–2592, *dbprice@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5722 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Udall Center Review.

Date: March 16–17, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/ Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Spotrias Review Panel.

Date: March 31–April 1, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Spinal Injury RFA.

Date: April 2, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5725 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Anchoring of a Ca^{++} Signaling Pathway Sperm Flagellum/ Mechanisms of Mammalian Sperm Capacitation

Date: April 5, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institue of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contrapception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5810 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of Program Project and Center Grant for Trauma and Burn.

Date: April 6–8, 2004.

Time: 7:30 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Tremont House, 2300 Ship's Mechanic Row, Galveston, TX 77550.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18B, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5811 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mental Retardation Research Center RFA.

Date: March 17–18, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5813 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Fellowship/K22's.

Date: April 5, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892–796.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5807 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, IADL & Information Systems.

Date: April 2, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5808 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: May 19, 2004.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities for the National Library of Medicine.

Place: National Library of Medicine, Building 38, Conference Room B, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS. Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: May 19, 2004.

Closed: 7:30 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC B1N30, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, Naitonal Institutes of Health, PHS, DHHS, Bldg 38, room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 19–20, 2004.

Open: May 20, 2004, 9 a.m. to 4:30 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 19, 2004, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 20, 2004, 9 a.m. to 12 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5809 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Novel Radiation Therapeutics.

Date: March 12, 2004.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7816, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Immunotherapy Research.

Date: March 12, 2004.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive. Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: March 15–16, 2004.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson Hotel, 1200 16th Street, Washington, DC 20036.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS Opportunistic Infections and Cancer.

Date: March 15, 2004.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Disorders and Clinical Neuroscience Member Conflict.

Date: March 17, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrada@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Malaria.

Date: March 18, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, 301–435–1149, *elzaataf@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Small Business Vaccine Development Applications.

Date: March 29–30, 2004.

Time: 8:30 a.m. to 2;30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Collaborative R01 Applications.

Date: March 30, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark. P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; FIC R25 Bioethics Telephone Review.

Date: April 1, 2004.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hilary Sigmon, PhD, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Computer Modeling.

Date: April 1, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ELSI Related Applications.

Date: April 1, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 EMNR–H (08) Member Conflict REN.

Date: April 2, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Reed A. Graves, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 616, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *graves@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–J 03M: Experimental Therapeutics of Cancer.

Date: April 2, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5721 Filed 3–12–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3195–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3195–EM), dated March 3, 2004, and related determinations.

EFFECTIVE DATE: March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 2004, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New York, resulting from the record/near record snow on January 28–31, 2004, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted.

This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

Cayuga, Lewis, Oneida, and Oswego counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. E4–556 Filed 3–12–04; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1510-DR]

Oregon; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1510–DR), dated February 19, 2004, and related determinations.

EFFECTIVE DATE: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 19, 2004:

Harney and Wheeler Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. E4–555 Filed 3–12–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–11]

Notice of Submission of Proposed Information Collection to OMB: Historically Black Colleges and Universities (HBCU) Program—NOFA

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This is a request for renewal of approval to the collect information through applications for award of grants for the Historically Black Colleges and Universities (HBCU) Program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

DATES: *Comments Due Date:* April 14, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0122) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management

Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Historically Black Colleges and Universities (HBCU) Program—NOFA.

OMB Approval Number: 2506–0122.

Form Numbers: SF–424, HUD–414B, HUD–424CB, SF–LLL, HUD–2880, HUD–2990, HUD–2991, HUD–2993, HUD–23004, HUD–2994, HUD–96010, and HUD–40067–HBCU.

Description of the Need for the Information and Its Proposed Use: This is a request for renewal of approval to collect information through applications for award of grants for the Historically Black Colleges and Universities (HBCU) Program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Respondents: Individuals or household, Not-for-profit institutions.

Frequency of Submission: On occasion, quarterly, semi-annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	105	5.76		54.54		33,000

Total Estimated Burden Hours: 33,000.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–5716 Filed 3–12–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27(f)(3)), notice is hereby given that the following Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued to the following companies:

Company	Activity	Location	Date issued
ConocoPhillips Alaska, Inc	Exploration	Carbon 1	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Grandview 2	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Kokoda 1 & 2	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Powerline 1	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Summit 2	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Scout 1	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Spark 4 & 8	Dec. 11, 2003.
ConocoPhillips Alaska, Inc	Exploration	Placer 1, 2, & 3	Dec. 29, 2003.
Fairweather Geophysical	Exploration	Harrison Bay and Nanuq S.	Dec. 29, 2003.
TotalFinaElf E&P USA, Inc	Exploration	NPR–A	Dec. 29, 2003.
BP Exploration (Alaska)	Production	Greater Prudhoe Bay Units	Dec. 31, 2003.
Anadarko Petroleum Corp	Exploration	Hot Ice #1	Jan. 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Perham at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (68 FR 66744; November 28, 2003)".

Dated: February 24, 2004.

Rowan W. Gould,

Regional Director.

[FR Doc. 04–5766 Filed 3–12–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Northeast Regional Panel will meet from 1 p.m. to 5 p.m. on Monday, May 17, 2004, and 8:30 a.m. to 4 p.m. on Tuesday, May 18, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Inn at Newport Beach, at the corner of Memorial Boulevard and Wave Avenue, Newport RI 02840. Phone 401.846.0310. Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Michele Tremblay, NEANS Panel Program Manager at (603) 796–2615 or, by e-mail, at *info@northeastans.org* or Everett Wilson, Aquatic Nuisance Species Task Force, at (703) 358–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Northeast Regional Panel was established by the ANS Task Force in 2001. The NEANS Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for the Northeast Region with respect to aquatic nuisance species,

b. makes recommendations to the Task Force,

c. assists the Task Force in coordinating Federal aquatic nuisance species program activities in the Northeast region,

d. coordinates aquatic nuisance species program activities in the Northeast region,

e. provides advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species, and

f. submits an annual report describing activities within the Northeast region related to aquatic nuisance species prevention, research, and control.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States that includes seven Northeast region States: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: proposed bylaws for the panel; future panel meeting scheduling; status update on NAISA bill reauthorization; activities update on the Invasive Species Advisory Committee; activities updates of the ANS Task Force and Invasive Species Council; committee break-out planning sessions and updates; a group discussion on establishing research priorities; a discussion on the Invasive Plant Atlas of New England (IPANE); a summary of the New England Rapid Assessment; a discussion on species priority listing, the pet industry and zebra mussels.

Dated: March 8, 2004.

Mamie Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 04–5767 Filed 3–12–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Gulf of Mexico Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Gulf of Mexico Regional Panel will meet from 8:30 a.m. to 4:30 p.m. on Wednesday, March 31, 2004, and 8:30 a.m. to 4:30 p.m. on Thursday, April 1, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Gulf of Mexico Regional Panel meeting will be held at the Marriott Mobile, 3101 Airport Boulevard, Mobile, Alabama 36606. Phone (251) 476–6400. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Ron Lukens, Gulf of Mexico Regional Panel Chair and Assistant Director, Gulf States Marine Fisheries Commission at (228) 875–5912 or Everett Wilson, Aquatic Nuisance Species Task Force, at 703–358–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Gulf of Mexico Regional Panel was established by the ANS Task Force in 1999. The Gulf of Mexico Regional Panel, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Gulf of Mexico,

b. develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. coordinates aquatic nuisance species program activities in the Gulf of Mexico,

d. advises public and private interests on control efforts, and

e. submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Gulf of Mexico region of the United States that includes five Gulf of Mexico States: Alabama, Florida, Mississippi, Louisiana and Texas. The Gulf of Mexico Regional Panel will discuss several topics at this meeting including: a facilitated session on the panel strategic plan; a review of Panel efforts to date including adding Mexican Government membership; status reports of Florida, Alabama, Mississippi, Louisiana and Texas State ANS management plans; status reports from panel working groups; presentations on prevention activities such as the use of Hazard Analysis and Critical Control Point (HACCP) planning; the pet industry and invasive species (invited presentation); status of the Mobile Bay Rapid Assessment Project; recommendations for the ANS

Task Force; and updates from Panel member organizations and states.

Dated: March 8, 2004.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 04–5768 Filed 3–12–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel on Aquatic Nuisance Species Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel on Aquatic Nuisance Species. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Great Lakes Panel on Aquatic Nuisance Species will meet from 1 p.m. to 5 p.m. on Monday, April 26, 2004 and from 8:30 a.m. to 4:30 p.m. on Tuesday, April 27, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Great Lakes Panel on Aquatic Nuisance Species meeting will be held at the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, Michigan 48108. Phone (734) 995–5900. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Great Lakes Panel on Aquatic Nuisance Species member and Senior Project Manager, Great Lakes Commission at (734) 971–9135 or Everett Wilson, Aquatic Nuisance Species Task Force, at 703–358–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Great Lakes Panel on Aquatic Nuisance Species. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Great Lakes Panel on Aquatic Nuisance Species was established by the ANS Task Force in 1991. The Great Lakes Panel on Aquatic Nuisance Species, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Great Lakes,
b. develops and submits recommendations to the national Aquatic Nuisance Species Task Force,
c. coordinates aquatic nuisance species program activities in the Great Lakes,
d. advises public and private interests on control efforts, and
e. submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Great Lakes region of the United States that includes eight Great Lakes States: Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin. The Great Lakes Panel on Aquatic Nuisance Species will discuss several topics at this meeting including: Introductions of new at-large members; a status update on the NAISA reauthorization bill; a status report on the IMO and U.S. Coast Guard ballast water programs; a discussion of future directions of the Great Lakes Panel; committee meetings (Research, Information/Education, and Legislation/Policy); progress reports from Great Lakes panel projects and Great Lakes Commission projects (ANS–GIS, Early Detection, Rapid Response); recommendations for the ANS Task Force; and updates from Panel member organizations and states.

Dated: March 8, 2004.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 04–5769 Filed 3–12–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–PA–24 1A]

OMB Control Number 1004–0133; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1994 (44 U.S.C. 3501 *et seq.*). On February 7, 2003, the BLM published a notice in the **Federal Register** (68 FR 6508) requesting comment on this information collection. The comment period ended on April 8, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0133), at OMB-OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO-630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Recreation Fee Permit Envelope (36 CFR 71).

OMB Control Number: 104–0133.

Bureau Form Number(s): 1370–36.

Abstract: The Bureau of Land Management (BLM) collects the envelopes to determine if all users of campground sites paid the required fee, the number of users, and their State of origin.

Frequency: On occasional (once per campground visit).

Description of Respondents: Individuals desiring to use the campground.

Estimated Completion Time: 2 minutes.

Annual Responses: 500,000.

Application Fee Per Response: 0.

Annual Burden Hours: 16,667.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: February 12, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–5726 Filed 3–12–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 05427]

Public Land Order No. 7598; Partial Revocation of Public Land Order No. 1229; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 284 acres of National Forest System lands withdrawn for the Deadman Lookout Site, Knob Hill Administrative Site, and T–6 Spring Recreation Area. This order opens the National Forest System lands to mining.

EFFECTIVE DATE: April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that a withdrawal is no longer needed on the lands described in Paragraph 1 and has requested the partial revocation. The lands withdrawn for the Knob Hill Administrative Site have been conveyed out of Federal ownership and this is a record-clearing action only for those lands.

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. Public Land Order No. 1229, which withdrew National Forest System lands for campgrounds, recreation areas, and other public purposes, is hereby revoked insofar as it affects the following described lands:

Coconino National Forest

Gila and Salt River Meridian

(a) Deadman Lookout Site

T. 24 N., R. 7 E.,
Sec. 26, S½N½SW¼NE¼, S½SW¼NE¼, and N½N½NW¼SE¼.

T–6 Spring Recreation Area

T. 16 N., R. 7 E.,
Sec. 25, S½SE¼ and NE¼SE¼.

(b) Knob Hill Administrative Site

T. 21 N., R. 7 E.,
Sec. 15, N½SE¼SE¼NW¼NW¼, NE¼SE¼NW¼NW¼, N½NE¼, and NE¼NW¼.

The areas described aggregate approximately 284 acres in Coconino and Yavapai Counties.

2. At 10 a.m. on April 14, 2004, the lands described in Paragraph 1(a) will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of these lands 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 (2000), 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 since Congress has provided for such determinations in local courts.

Dated: February 24, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–5749 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 94899, NMNM 94902, NMNM 94903]

Public Land Order No. 7599; Withdrawal of National Forest System Lands for the Capilla Peak, La Mosca Peak, and Microwave Electronic Sites; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 329.44 acres of National Forest System lands from location and entry under the United States mining laws for 20 years to protect the Capilla Peak, La Mosca Peak, and Microwave Electronic Sites.

EFFECTIVE DATE: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph Jaramillo, BLM Albuquerque Field Office, 435 Montano NE Albuquerque, New Mexico 87107, 505–761–8779.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), to protect the Capilla Peak, La Mosca Peak, and Microwave Electronic Sites:

Cibola National Forest

New Mexico Principal Meridian

Capilla Peak Electronic Site

T. 5 N., R. 5 E.,
Sec. 3, W½ lot 2, E½ lot 3, E½W½ lot 3, NE¼NW¼SW¼NE¼, W½W½SW¼NE¼, SE¼SE¼SW¼NW¼, E½SE¼NW¼, SW¼SE¼NW¼, N½NE¼NE¼SW¼, SW¼NE¼NE¼SW¼, NW¼NE¼SW¼, E½NE¼NW¼SW¼, and NW¼NE¼NW¼SW¼.

T. 6 N., R. 5 E.,
Sec. 34, E½SE¼SE¼SW¼ and W½SW¼SW¼SE¼.

La Mosca Peak Electronic Site

T. 12 N., R. 7 W.,
Sec. 20, SW¼SW¼NW¼NE¼, W½W½SW¼NE¼, E½E½SE¼SE¼NE¼, NW¼SE¼NE¼NW¼, S½SE¼NE¼NW¼, SW¼NE¼NW¼, S½NW¼NE¼NW¼, N½NW¼SE¼NW¼, NE¼SE¼NW¼, NW¼NW¼SE¼, and N½N½SW¼NW¼SE¼;
Sec. 21, W½W½SW¼SW¼NW¼.

Microwave Electronic Site

T. 11 N., R. 7 W.,
Sec. 8, S½SE¼SW¼ and SW¼SW¼SE¼;
Sec. 17, W½NW¼NE¼, NE¼NW¼, SE¼SW¼NW¼, N½SE¼NW¼, and SW¼SE¼NW¼.

The areas described aggregate 329.44 acres in Cibola and Torrance Counties.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: February 24, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–5750 Filed 3–12–04; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–496]

In the Matter of: Certain Home Vacuum Packaging Products; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Withdraw Two Patent Claims From the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a motion to withdraw claims 24 and 25 of U.S. Patent No. 4,941,310, from the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3152. Copies of the Commission order, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. 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*.

SUPPLEMENTARY INFORMATION: On August 18, 2003, the Commission instituted this investigation based upon a complaint filed by Tilia, Inc. and Tilia International (collectively, "Tilia"). 68 FR 49521. At the same time, the Commission provisionally accepted a motion for temporary relief filed by Tilia. In its complaint, Tilia alleges that the accused imported products infringe claims 3, 4, 6, 24–25, and 34 of U.S. Patent No. 4,941,310 ("the '310 patent"). The notice of investigation named Applica, Inc., Applica Consumer Products, Inc.; ZeroPack Co., Ltd.; The Holmes Group, Inc.; and The Rival Company as respondents. On January 15, 2004, the Commission determined not to review an ID denying Tilia's motion for temporary relief. On February 3, 2004, Tilia moved pursuant to rules 210.21(a)(1) to withdraw claims 24 and 25 of the '310 patent from the investigation. Respondents and the Commission investigative attorney did not oppose the motion. On February 18, 2004, the ALJ issued an ID granting Tilia's motion to withdraw claims 24 and 25 of the '310 patent from the investigation. No petitions of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.42 of Commission's Rules of Practice and Procedure, 19 CFR 210.42.

By order of the Commission.

Issued: March 10, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–5803 Filed 3–12–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 18, 2004, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methamphetamine (1105), and Hydromorphone (9150), basic class of controlled substances listed in Schedule II. The firm had inadvertently dropped the two basic classes from its renewal application submitted on August 25, 2003, and published in the **Federal Register** on February 18, 2004 (69 FR 7656).

The firm plans to manufacture the listed controlled substances in bulk to supply to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than May 14, 2004.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5774 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

Department of Justice

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 30, 2004, Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The firm plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of the basic classes of controlled substances listed may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States

Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 14, 2004. This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous 1975 notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5779 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 20, 2004, Lin Zhi International, Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of controlled substances to make drug testing reagents and controls.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than May 14, 2004.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5778 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 5, 2004, Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than May 14, 2004.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5773 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 6, 2004, Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Raw Opium (9600)	II
Opium poppy (9650)	II
Concentrate of Poppy Straw (9670).	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of the basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 14, 2004. This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous 1975 notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5775 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 14, 2003, and published in the **Federal Register** on December 2, 2003, (68 FR 67477), National Center for Development of Natural Products, The University, Mississippi, 135 Coy Waller Lab Complex, University of Mississippi 38677, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of National Center for Development of Natural Products, the University of Mississippi, to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated National Center for Development of Natural Products, The University of Mississippi, to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5772 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manuafacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 29, 2004, Rhodes Technologies, 498 Washington Street, Coventry, Rhodes Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Thebaine (9333)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The firm plans to produce bulk products for conversion and distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than May 14, 2004.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5781 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 6, 2004, Roche Diagnostics Corporation, Attn.: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made renewal by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinol (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoylecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to produce small quantities of controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than May 14, 2004.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5777 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 6, 2004, Roche Diagnostics Corporation, Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Benzoylecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture diagnostic products for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 14, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5780 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Correction

As set forth in the **Federal Register** on February 5, 2004 (69 FR 5583), Sigma Aldrich Company, Subsidiary of Sigma Aldrich Corporation, 3500 Dekalb Street, St. Louis, Missouri 63118, was granted a registration as an importer of certain Schedule I and II controlled substances.

The drug code for Opium, powdered, a basic class of Schedule II controlled substance, was erroneously listed as 9649 rather than 9639. The notice should have stated: Opium, powdered (9639).

Dated: March 8, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5770 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 14, 2003, and published in the **Federal Register** on December 2, 2003, (68 FR 67479), Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxy-amphetamine 7391.	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
1-[1-(2-thienyl)cyclohexyl]piperidine (TCP) (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecogonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II

Drug	Schedule
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Aldrich Research Biochemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research Biochemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5771 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 29, 2004, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than May 14, 2004.

Dated: March 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5776 Filed 3–12–04; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, March 18, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Notice of Proposed Rulemaking: Part 717 of NCUA's Rules and Regulations implementing the Fair and Accurate Credit Transactions Act of 2003—Notice to Members regarding Release of Negative Information to Credit Reporting Agencies.

2. Board Briefing: Part 717 of NCUA's Rules and Regulations regarding Medical Information.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, March 18, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–5900 Filed 3–11–04; 1:29 pm]

BILLING CODE 7535–01–M

NATIONAL INDIAN GAMING COMMISSION

Privacy Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Notice of a new system of records.

SUMMARY: The purpose of this document is to publish, as required by 5 U.S.C. 552a(e) and OMB Circular A–130, a notification of a system of records. The need for such a system arises as a result of laws regulating certain types of gaming on Indian lands.

DATES: This action will be effective without further notice on April 10, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Comments may be mailed to: National Indian Gaming Commission, System of Records Notice Comments, 1441 L Street, NW., Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to (202) 632–7066 (this is not a toll-free number). Comments may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: John R. Hay at (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission (NIGC or Commission) under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. The scope of this notice covers information necessary to ensure proper oversight of contract managers of gaming operations on Indian lands. The IGRA requires the Chairman to (1) obtain background information on each person having a direct financial interest in, or management responsibility for, a management contract, (2) conduct background investigations of such persons, and (3) make a determination as to the persons's suitability for Indian gaming. The Commission stores all such information in a system of records. Hence, the need arises for a system of records notice.

NIGC–2

SYSTEM NAME:

Management Contract Individuals Record System.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATION:

National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005, and in the field locations of financial background investigators.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with a financial interest in, or management responsibility for, a management contract as defined under 25 CFR part 502.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of applications; background and financial information collected by staff and copies of reports of background investigations. Such information includes: (1) Full name, other names used, social security number(s) and birth date; (2) business and employment positions held, business and residence addresses, drivers license numbers; (3) the names and current addresses of personal references; (4) current business and residence telephone numbers; (5) a description of any previous business relationships with the gaming industry generally; (6) a description of any previous business relationships with Indian tribes; (7) the name and address of any licensing or regulatory agency with which the person has filed an application for license or permit relating to gaming; (8) for any felony for which there is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date of disposition; (9) for any misdemeanor conviction or ongoing misdemeanor prosecution, the name and address of the court involved and the date and disposition; and (10) whatever other information the NIGC deems relevant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. 2711.

PURPOSE:

Used by Commission members and staff to verify suitability of persons with a financial interest in, or management responsibility for, a management contract.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose relevant information to Federal, State, tribal, or local law enforcement or regulatory agencies to verify information supplied by applicants in connection with determining suitability.

2. To disclose relevant information to tribes that engage management contractors to manage their Indian gaming operations.

3. In the event that records in this system indicate a violation or potential violation of law, criminal, civil, or regulatory in nature, the relevant records may be referred to the agency charged with responsibility for investigating or prosecuting such violation.

4. To disclose relevant information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. To disclose relevant information to a Federal, State, local, or tribal agency (or their agents) that is involved in civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation to protect the integrity of Indian gaming.

6. To disclose relevant information to Indian tribal officials who have need for the information in the performance of their official duties.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

No disclosures are made to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper files, electronic media, and other computer storage devices.

RETRIEVABILITY:

Individual applicant name, gaming operation, management contractor, social security number, and birth date.

SAFEGUARDS:

During business hours, folders are maintained in locked cabinets to which only authorized personnel have access; automated records are protected by computer passwords and tape or disc library physical security. At the main facility the building has security guards and a secured door, and all entrances are monitored by electronic surveillance equipment after business hours.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration requirements. Applications and summary reports are retained for 10 years; other information is retained for shorter periods. Individuals may request a copy of the disposition instructions from the NIGC Privacy Act Officer.

SYSTEM MANAGER AND ADDRESS:

Records Manager, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Persons wishing to inquire whether the System contains information concerning them may submit inquiries to the Privacy Act Officer, NIGC, at the address above. Such persons must provide proof of their identity by including a statement, signed by the person and either notarized or witnessed by two persons (including addresses of witnesses). The statement must be that the person is who he or she claims to be. If a person makes an inquiry in person, such person must present the Commission with a statement signed by the person and either notarized or witnessed by two persons (including addresses of witnesses).

RECORD ACCESS PROCEDURES:

Persons wishing access to their records should contact the Privacy Act Officer, NIGC, at the address above. Such persons must provide proof of their identity by including a statement, signed by the individual and either notarized or witnessed by two persons (including addresses of witnesses). The statement must be that the person is who he or she claims to be. If a person makes an inquiry in person, such person must present the Commission with a statement signed by the person and either notarized or witnessed by two persons (including addresses of witnesses). Such persons must comply with the Privacy Act regulations.

CONTESTING RECORD PROCEDURES:

Any person who has reviewed a record pertaining to him or her may request that the Commission amend all or any part of that record by sending a request to the Privacy Act Officer. A request must contain the name of the person requesting the amendment, the name of the system of records where the record is maintained, a copy of the record to be amended or a description of that record, a statement of the material requested to be amended, and the basis for amendment, including material that substantiates the reason for the amendment.

RECORD SOURCE CATEGORIES:

Individual applications for background investigations; background investigation reports compiled by the

NIGC and sources including tribes, Office of Personnel Management, or by contractors; persons interviewed as part of a background investigation; Federal, state, foreign, tribal, and local law enforcement and regulatory agencies; Commission staff and members; credit bureaus.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2) the Commission is claiming exemptions from certain provisions of the Act for portions of its records. The exemptions and the reasons for them are described in the regulations.

Dated: March 10, 2004.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

[FR Doc. 04–5796 Filed 3–12–04; 8:45 am]

BILLING CODE 7565–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 68 FR 75652 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (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 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*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An Agency 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 unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the Research Experiences for Teacher (RET) Program.

OMB Number: 3145–NEW.

Type of Request: Intent to seek approval to carry out a new information collection for one year.

Abstract: Proposed Project: The Directorate for Engineering (ENG) initiated the Research Experiences for Teachers (RET) Supplements activity in FY 2001 to be add-ons to active award funded by ENG programs. The intent was to build on the popular NSF-wide Research Experiences for Undergraduates (REU) Supplements activity by providing opportunities for K–12 teachers to conduct hands-on experiences in the laboratories/facilities of ENG-funded researchers interested in participating in RET. Typically the supplements supported one or two teachers. The assumption was that the teachers could also benefit from involvement in research and direct exposure to the scientific method and transfer what they learned into classroom activities. Since then, ENG has funded RET Site awards, which are similar to REU Sites in that NSF awards fund groups of teachers to work with faculty members at the same institution and to engage in group activities related to the research. In 2003, community college faculty became eligible as participants in RET awards.

This study of RET will include participants in RET Supplement and Site awards from 2001–2003 funded by the Division of Engineering Education and Centers, the Division of Bioengineering and Environmental Systems, and the Division of Design, Manufacture, and Industrial Innovation. The study will examine whether the scale and programmatic characteristics of the larger group awards, such as those funded as RET Sites, bring about different outcomes and impacts on the teachers and their subsequent instructional and professional activities, compared with those resulting from involvement in the typical small-scale RET Supplement. NSF wishes to know how RET experiences have affected participating teachers' subsequent teaching techniques and content modifications made as a result of teachers' RET activities. In addition, outcomes and impacts beyond the teachers' own classrooms from the research experiences, *e.g.*, follow-up knowledge transfer activities, any formal partnerships formed between the awardee and the teachers' school system/district, or community college, etc. should also be examined. The collection will be done on the World Wide Web.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondent: Individuals.

Estimated Number of Responses per Form: 596.

Estimated Total Annual Burden on Respondents: 298 hours—596 respondents at 30 minutes per response.

Frequency of Responses: One time.

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: March 9, 2004.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–5751 Filed 3–12–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–6703]

General Atomics Model No. Rg–1 Package; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 71.8, from certain requirements of 10 CFR 71.38 "Renewal of a certificate of compliance or quality assurance program approval" to General Atomics Company. The exemption would permit renewal of Certificate of Compliance No. 6703 for the Model No. RG–1 radioactive material transportation package even though General Atomics Company, the certificate holder, did not request renewal at least 30 days before the expiration of the Certificate of Compliance. Therefore, as required by 10 CFR 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact.

Environmental Assessment (EA)

Identification of the Proposed Action: Requirements for renewal of a certificate of compliance are specified in 10 CFR 71.38. Specifically, 10 CFR 71.38(b) states:

> In any case in which a person, not less than 30 days before the expiration of an existing Certificate of Compliance or Quality Assurance Program Approval issued pursuant to the part, has filed an application in proper form for renewal of either of those approvals, the existing Certificate of Compliance or Quality Assurance Program Approval for which the renewal application was filed shall not be deemed to have expired until final action on the application for renewal has been taken by the Commission.

Certificate of Compliance No. 6703, Revision No. 5, expired on May 31, 1990. General Atomics Company requested renewal on May 29, 1990. Although the renewal application was dated before the certificate expiration date, it was not at least 30 days before expiration. The certificate was deemed to have expired on May 31, 1990, and NRC terminated use of the package by letter dated June 13, 1990, stating that the termination was due to the late filing of the application.

General Atomics Company by application dated February 26, 2004, has again requested renewal of Certificate of Compliance No. 6703. Although this renewal application from General Atomics Company is not timely, as defined in 71.38(b), NRC proposes to renew Certificate of Compliance No. 6703 for approximately an 18-month period to authorize use of the package for the limited shipments identified in the renewal application.

The Model No. RG–1 package is a radioisotope thermoelectric generator (RTG). It is approximately cylindrical, is 18 inches high, and has a base diameter of 14 inches. The package incorporates a fixed radioactive source within a main housing that is closed by a bolted closure flange. The radioactive source is a maximum 8,300 curies of strontium-90 titanate doubly encapsulated in a Type 304L stainless steel liner and Hastelloy C capsule. The thermoelectric module, that converts the radioactive heat source into low voltage electrical power, and uranium and tungsten shields are also fixed within the main housing. The package has an electrical connector, top end lifting lugs, and a bottom flange used for package tie-down. The device is designed to be transported and operated as an integral unit. It is designed for marine use at sea depths which may result in external pressures up to 10,000 psi. The package weighs approximately 800 pounds.

The Need for the Proposed Action: The proposed exemption would allow renewal of Certificate of Compliance No. 6703 for the Model No. RG–1 package for a limited period of time (approximately 18 months) for the purpose of authorizing the shipment of two packages from the General Atomics Company site in San Diego, California, to the Los Alamos National Laboratory in Los Alamos, New Mexico, for storage and final disposition.

Environmental Impacts of the Proposed Action: Continued use of certain Type B packages previously-approved by the NRC (including the Model No. RG–1 package) is authorized under general license by the provisions in 71.13(a). Section 71.13 includes several restrictions with respect to continued use of these packages, including limited fabrication of new units (71.13(a)(1)) and limited modifications to the package that can be authorized (71.13(c)). Renewal of Certificate of Compliance No. 6703 would allow continued use of this package, subject to the conditions specified in 71.13, the general license provisions of 71.12, and the Certificate of Compliance.

The Certificate of Compliance will be renewed for approximately an 18-month term that will expire on September 30, 2005. The following condition will be included in the renewed certificate:

> This certificate authorizes a one-time shipment from General Atomics Company site in San Diego, California, to the Los Alamos National Laboratory in Los Alamos, New Mexico, for two packages (Serial Nos. –001 and –002).

The potential environmental impact of transporting radioactive material pursuant to 10 CFR part 71 was initially presented in the "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," for the proposed rule to amend 10 CFR part 71 (40 FR 23768(1977)). The environmental statement was published in 1977 as NUREG–0170, Volumes 1 and 2. A categorical exclusion for transportation package approvals is given in 10 CFR 51.22(c)(13).

NUREG–0170 included an evaluation of environmental impacts from three parts: The radiological impact from normal, incident-free transport, the risk of radiological effects from accidents involving vehicles carrying radioactive materials, and all non-radiological impacts. The principal unavoidable environmental effect was found to be the population exposure resulting from normal transport of radioactive materials. The much smaller risk from accidents that have the potential for releasing radioactive material from packages will always be present, but such accidents have a very small probability of occurrence. The calculated, unavoidable non-radiological impact resulting from transport amounts to about two injuries and one fatality every five years, from transportation accidents from all radioactive material transport. Other non-radiological impacts such as the use of vehicle fuel and other resources were found to be insignificant. The assessment included impacts due to shipments such as the RG–1 package, that is, shipment of sealed, industrial sources within accident-resistant packages.

The RG–1 package design was originally approved by NRC on November 28, 1972. The Certificate of Compliance was subsequently renewed on January 23, 1975; February 6, 1980; and May 30, 1985. Although the renewal application in 1990 was filed late, there is no indication that the renewal request would have been denied if the application had been

timely. No specific design or safety problems were identified as contributing to the decision not to renew the certificate. Because it considered shipments similar to the shipments proposed in the RG–1 package, it is concluded that the environmental impacts of the proposed action would not change the potential environmental effects assessed in the 10 CFR part 71 rulemaking (40 FR 23768 (1977)). Therefore, the NRC has determined that there will be no significant environmental impacts as a result of approving the exemption for the one-time shipments of the two Model No. RG–1 packages.

Alternatives to the Proposed Action: The following alternatives were identified that could eliminate the need for an exemption to 71.38. The identified alternatives are: (1) Denial of the exemption request (*i.e.*, the "no-action" alternative), (2) repackaging the radioactive sources in an alternative, certified transportation package, and (3) repackaging the RG–1 device within a certified transportation package *i.e.*, overpacking the RG–1 package).

The no-action alternative would result in the sources remaining at the current location for the indefinite future, since funding for recovery of these sources is currently available, but may not continue to be available indefinitely. This alternative would increase the likelihood of loss of control of this radioactive material that is currently stored at some expense from a facility that no longer has a use for this material. It is judged that the sources would eventually need to be transported from the facility, in which case any environmental impacts associated with transport will also be incurred. Therefore, it is concluded that the no-action alternative is not desirable and does not reduce environmental impact.

General Atomics Company has stated that it knows of no currently-certified packagings that could be readily made available and used to transport the sources. Other packages designed for the transport of RTG sources are not suitable and cannot be used for transporting sources designed for the RG–1 package. This is because the sources and transport package, which also serves as the RTG device housing and radiation shield, are designed as an integral unit and are not intended to be separated for the useful lifetime of the source. Other transportation packages that could be used for these sources would likely need design modifications to safely accommodate these sources, and the certificates of compliance for these alternative packages would almost certainly require amendment to authorize these specific sources. These design and certificate changes would constitute a lengthy and expensive process that would not result in an increase in safety for these shipments. Transferring the sources from the RG–1 package would also require handling the "bare" sources, that is, handling the sources outside of the package's radiation shielding. This process can be accomplished; however, it is an evolution that presents significant safety risk and potential radiation exposure to workers. In addition, General Atomics Company has decommissioned and dismantled its hot cell facility, which would further complicate source removal. It is judged to be desirable from a safety and environmental impact perspective to limit the handling of the sources outside the shielded configuration.

Handling the bare sources would not be required if the RG–1 package could be placed within another certified transportation package. However, a package that can accommodate the RG–1 package and is authorized for transport of the type of source in the RG–1 package does not currently exist.

It is therefore concluded that safety is enhanced if the RG–1 package is expeditiously shipped intact with its integral sources.

Agencies and Persons Consulted: On March 1, 2004, Mr. Richard Boyle, Chief of the Radioactive Materials Branch of the U.S. Department of Transportation, Office of Hazardous Materials Technology, was contacted about the EA for the proposed action and had no comments. In addition, on March 1, 2004, Mr. James Shuler, Health Physicist, Office of Environmental Management, U.S. Department of Energy, was also contacted and had no comments. The NRC has determined that a consultation under section 7 of the Endangered Species Act is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat. The NRC has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties because it is an administrative/procedural action. Therefore, no further consultation is required under section 106 of the National Historic Preservation Act.

Conclusion: Granting the exemption to the timely-renewal provision that authorizes the shipments proposed in the Model No. RG–1 package will result in insignificant environmental impact. These shipments fall well within the number and types of shipments considered in NUREG–0170, which found that the transportation of radioactive materials in the U.S. results in acceptably small radiological and non-radiological impacts.

Sources Used:

1. General Atomics application dated February 26, 2004, ML040650103.

2. "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG–0170, Vols. 1 and 2, U.S. Nuclear Regulatory Commission, Washington, DC, December 1977, ML022590265.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption to 10 CFR 71.38(b) by renewing Certificate of Compliance No. 6703 for limited shipments without a timely application being filed will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that a Finding of No Significant Impact is appropriate, and that an environmental impact statement for the proposed exemption is not necessary.

For further details with respect to the exemption request, *see* the General Atomics Company renewal application dated February 26, 2004. The renewal request and request for exemption was docketed under 10 CFR part 71, Docket No. 71–6703. These documents are available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 3rd day of March, 2004.

For the Nuclear Regulatory Commission.

Nancy L. Osgood,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E4–554 Filed 3–12–04; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

The PBGC notes that the provisions of the Job Creation and Worker Assistance Act of 2002 that temporarily increased the required interest rate to be used to determine the PBGC's variable-rate premium to 100% (from 85%) of the annual yield on 30-year Treasury securities expired at the end of 2003. Thus, the required interest rate announced in this notice for plan years beginning in March 2004 has been determined under prior law. Legislation has been proposed that would further change the rules for determining the required interest rate. If such legislation is adopted, and the change affects the required interest rate for plan years beginning in March 2004, the PBGC will promptly publish a **Federal Register** notice with the new required interest rate and post the change on the PBGC's Web site.

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in March 2004. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, (202) 326–4024. TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.) The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in March 2004 is 4.19 percent (*i.e.*, 85 percent of the 4.93 percent yield figure for February 2004).

The PBGC notes that the provisions of the Job Creation and Worker Assistance Act of 2002 that temporarily increased the required interest rate to be used to determine the PBGC's variable-rate premium to 100% (from 85%) of the annual yield on 30-year Treasury securities expired at the end of 2003. Thus, the required interest rate announced in this notice for plan years beginning in March 2004 has been determined under prior law. Legislation has been proposed that would further change the rules for determining the required interest rate. If such legislation is adopted, and the change affects the required interest rate for plan years beginning in March 2004, the PBGC will promptly publish a **Federal Register** notice with the new required interest rate and post the change on the PBGC's Web site.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between April 2003 and March 2004.

For premium payment years beginning in:	The required interest rate is:
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37
August 2003	4.93
September 2003	5.31
October 2003	5.14
November 2003	5.16
December 2003	5.12
January 2004	4.31
February 2004	4.23
March 2004	4.19

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC on this 9th day of March 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–5763 Filed 3–12–04; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49379; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 9, 2004.

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a request that the Commission extend EMCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency through March 31, 2005.

On February 13, 1998, pursuant to Sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1 promulgated

[1] 15 U.S.C. 78s(a).

[2] Letter from Karen L. Saperstein, General Counsel, EMCC (Jan. 23, 2004).

[3] 15 U.S.C. 78q–1(b) and 78s(a)(1).

thereunder,[4] the Commission approved on a temporary basis until August 20, 1999, EMCC's application for registration as a clearing agency.[5] By subsequent orders, the Commission has extended EMCC's registration as a clearing agency through March 31, 2004.[6]

EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.[7] EMCC began operating on April 6, 1998, with ten dealer members. Since it began operations, EMCC has added certain emerging market sovereign debt and corporate debt to the list of eligible securities that may be cleared and settled at EMCC.[8]

As part of EMCC's initial temporary registration, the Commission granted EMCC a temporary exemption from Section 17A(b)(3)(B) of the Act[9] because EMCC did not provide for the admission of some of the categories of members required by that section.[10] To date, EMCC's rules still only provide membership criteria for U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that it is appropriate for EMCC to limit the categories of members during its initial years of operations because to date no entity in a category not covered by EMCC's rules has expressed an interest in becoming a member.[11] Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from Sections 17A(b)(3)(A)[12] and 17A(b)(3)(F)[13] of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of credit at Euroclear used to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.[14] The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2 and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members.[15] Because not all of EMCC's members have become netting members, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(A) and (F).

In addition, because EMCC is currently in the process of revising its foreign member program, including its membership application process and ongoing financial requirements, the Commission is extending EMCC's temporary registration so that EMCC can complete its revisions and Commission staff has time to assess the revised foreign member program.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting permanent registration or in instituting proceedings to determine whether permanent registration should be denied in accordance with Section 19(a)(1) of the Act.[16] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th 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. 600–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the amended application for registration, all written statements with respect to the application that are filed with the Commission, all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–30 and should be submitted by April 5, 2004.

It is therefore ordered, pursuant to Section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600–30) be and hereby is temporarily approved through March 31, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5788 Filed 3–12–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 39661 (Feb. 13, 1998), 63 FR 8711 (Feb. 20, 1998) ("Registration Order").

[6] Securities Exchange Act Release Nos. 41733 (Aug. 12, 1999), 64 FR 44982 (Aug. 18, 1999); 43182 (Aug. 18, 2000), 65 FR 51880 (Aug. 25, 2000); and 44707 (Aug. 15, 2001), 66 FR 43941 (Aug. 21, 2001); 45648 (Mar. 26, 2002), 67 FR 15438 (Apr. 1, 2002); 47602 (March 31, 2003), 68 FR 16848 (April 7, 2003).

[7] Brady bonds are restructured bank loans that were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, U.S. Treasury zero-coupon bonds and other high-grade instruments collateralize the principal and certain interest of these bonds.

[8] Securities Exchange Act Release Nos. 40363 (Aug. 25, 1998), 63 FR 46263 (Aug. 31, 1998); 41618 (July 14, 1999), 64 FR 39181 (July 21, 1999); and 46714 (Oct. 23, 2002), 67 FR 66031 (Oct. 29, 2002).

[9] 15 U.S.C. 78q–1(b)(3)(B).

[10] Registration Order at 8716.

[11] EMCC has represented to the staff that it will modify its rules to provide admission criteria for other entities that wish to become EMCC members.

[12] 15 U.S.C. 78q–1(b)(3)(A).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] Registration Order at 8720.

[15] Securities Exchange Act Release Nos. 41247 (Apr. 2, 1999), 64 FR 17705 (Apr. 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

[16] 15 U.S.C. 78s(a)(1).

[17] 17 CFR 200.30–3(a)(50)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49376; File No. SR–NASD–2004–038]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Program for Nasdaq PostData and Fees Presently Available Under NASD Rule 7010(s)

March 9, 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 1, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). Nasdaq provided the Commission with written notice of its intention to file the proposed rule change on February 23, 2004.

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

Nasdaq proposes to extend for one year the pilot program for Nasdaq PostData presently available under NASD Rule 7010(s). Nasdaq is making no substantive changes to the pilot, other than to extend its operation through March 31, 2005. The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.[5] Nasdaq extended this pilot on a number of occasions, most recently through March 31, 2004.[6] Nasdaq hereby proposes to extend the pilot period for PostData for an additional year, through March 31, 2005.

At its launch on March 18, 2002, PostData consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.*, block or total).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[7] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Under the pilot extension, Nasdaq would continue to make PostData accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com website. In addition, PostData would continue to consist of the same seven reports that are currently made available to subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[8] and 15A(b)(6)[9] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–2004–038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review 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

[5] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR–NASD–99–12).

[6] *See* Securities Exchange Act Release Nos. 48576 (September 30, 2003), 68 FR 57946 (October 7, 2003) (SR–NASD–2003–142); 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003) (SR–NASD–2003–60) (extending pilot through September 30, 2003); 47503 (March 14, 2003), 68 FR 13745 (March 20, 2003) (SR–NASD–2003–35) (extending pilot through March 31, 2003); and 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003) (SR–NASD–2003–02) (extending pilot through February 28, 2003).

[7] *See* Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002) (SR–NASD–2002–90).

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2004–038 and should be submitted by April 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5787 Filed 3–12–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49378; File No. SR–OCC–2003–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To Clearing Member Trade Assignment Processing

March 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 14, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on February 18, 2004, amended the proposed rule change, as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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 proposed rule change would amend OCC's by-laws and rules to update the clearing member trade assignment ("CMTA") procedures, increase OCC's initial and minimum net capital requirements, and increase OCC's minimum clearing fund requirement.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to amend OCC's by-laws and rules to update the description of the CTMA procedures, increase OCC's initial and minimum net capital requirements, and increase OCC's minimum clearing fund requirement for execution-only clearing members.

1. Background

CMTA processing permits one clearing member ("carrying clearing member") to authorize another clearing member ("executing clearing member") to direct that exchange transactions be transferred to an account of the carrying clearing member for clearance and settlement.[3] The executing clearing member executes the transaction itself or guarantees the broker that executed the transaction and directs the transaction to be cleared into an account of the carrying clearing member via the options exchanges' systems for reporting matching trade information to OCC. A carrying clearing member does not have the ability to approve or reject such a direction before the transaction is entered into the exchanges' systems for reporting to OCC.

The matching trade information submitted by an exchange for a transaction that has been executed pursuant to a CMTA arrangement will identify both the carrying and executing clearing members by their assigned clearing numbers. OCC permits an executing clearing member to transfer transactions effected only on the exchange(s) designated by the carrying clearing member in a CMTA authorization filed with OCC. Accordingly, before a transaction is transferred to an account of the carrying clearing member for clearance, OCC's system confirms that (i) there is a valid CMTA arrangement between the carrying and executing clearing member and (ii) the exchange transaction was effected on a designated exchange. The carrying clearing member is then responsible for settling the trade and maintaining the resulting position. If their arrangement permits, a carrying clearing member may transfer the position back to the executing clearing member through OCC's systems to correct the execution member's good-faith error in identifying the carrying clearing member in the submitted trade information.[4]

OCC's CMTA facility supports two distinct types of business. First, clearing members that execute transactions for correspondent brokers use the process to transfer transactions to the correspondent brokers' clearing firms. Second, firms that execute trades for institutional and other customers with prime brokerage arrangements use the process to transfer the trades to the prime broker clearing member.

2. Discussion

(a) CMTA Rule Changes

Article VI, Sections 1 and 2, of OCC's by-laws and the term "authorized Exchange member" as defined in Article I, Section 1, of OCC's by-laws provide the current framework for OCC's CMTA facility. In response to clearing member requests, OCC has been working with the options exchanges and a group of clearing members that act as prime brokers to update the description of the CMTA facility in OCC's rules. In particular, the group's efforts focused on more closely defining the rights and obligations of the clearing members that are parties to a CMTA arrangement in order to remove their regulatory and legal uncertainties. Proposed Rule 403 is the result of that collaborative effort, and it would operate as follows.

Proposed Rule 403 will require clearing members that are parties to a CMTA arrangement to register and provide certain details of their arrangement with OCC. Such registration will be effective when the clearing members provide matching information regarding their arrangement.

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] The CMTA facility was developed to permit carrying clearing members to clear and settle transactions effected on an exchange where they are either not a member or do not maintain a presence for trade execution.

[4] This commonly occurs if the executing clearing member has transposed digits of a carrying clearing member's clearing number causing the transaction to clear in an account of a wrong clearing member (assuming a valid CMTA arrangement exists between the executing and misidentified carrying clearing member).

Rule 403 would also establish certain checks to be performed by OCC's system to verify that a valid CMTA registration exists. Transactions that fail these checks will be transferred to a designated account or, if such designation has not been made, to the customers' account or segregated futures account of the executing clearing member, as applicable. A carrying clearing member is responsible for each transaction transferred to its account pursuant to a CMTA arrangement, subject to its right to return the resulting position for certain specified reasons (as explained below). Notwithstanding that right, the carrying clearing member is responsible to effect premium or margin settlement, as applicable, on the business day after the trade was executed for any positions carried in its accounts after nightly processing.[5]

A position transferred pursuant to a CMTA arrangement may be returned to the executing clearing member upon notice for reasons to be specified in a standard agreement.[6] The reasons that are being considered include: (i) The matching trade information did not conform to the trade information supplied to the carrying clearing member by the customer on whose behalf the trade was executed (*e.g.*, transaction was for a put option in a particular series rather than a call option); (ii) the carrying clearing member's reasonable belief that the trade involved a violation of applicable law, rule, or regulation (*e.g.*, failure to deliver a prospectus); (iii) the carrying clearing member no longer carries the account of the customer on whose behalf the trade was executed or has restricted the customer's ability to use the CMTA process; or (iv) the carrying clearing member was misidentified in the matching trade information. Returns must be effected in accordance with specified procedures by a prescribed cutoff time before trading commences on the business day after trade date. OCC will transmit certain information regarding the reasons given for a return, but will not validate the stated reasons. A position that has been assigned, exercised, or matured may not be transferred or returned under Rule 403 and will be dealt with in accordance with the provisions of the CMTA agreement between the clearing members.

A carrying clearing member may not effect a return after the prescribed cutoff time. Initiating a return after the applicable cutoff time might subject the carrying clearing member to disciplinary action. In the case of a position returned to an executing clearing member due to a misidentification of the carrying clearing member, the executing clearing member may retransfer the position to the correct carrying clearing member in order to correct the error.[7]

A registered CMTA arrangement may only be terminated as specified in Rule 403, which permits clearing members to either mutually or unilaterally terminate the arrangement.[8] Terminations by mutual agreement will be effective when OCC receives notice of termination from both clearing members. Unilateral terminations will be effective the next business day after notice of the termination has been given to OCC and the other clearing member. Transactions effected after the effective time of a termination will be treated as failed CMTAs and will be the responsibility of the executing clearing member.

Other rule changes relating to CMTAs include additional definitions of terms used in CMTA processing (*e.g.*, "carrying clearing member" and "executing clearing member") and other conforming changes.

(b) *Increases in Net Capital and Minimum Clearing Fund Requirements*

OCC has also reassessed the risks associated with CMTA transactions. A small number of OCC's clearing members conduct an "execution only" business (*i.e.*, their sole business is to execute transactions that are then given up to carrying clearing members for clearance and settlement). These firms' membership approval and clearing fund deposits are premised on the fact that they pose limited position risk to OCC because they do not normally carry positions. The average net capital of these firms is substantially less than the average net capital of OCC's clearing members, although each firm's net capital is above OCC's current initial requirement and each firm maintains the minimum clearing fund deposit of $150,000.

With the proposed increase in the number of permissible reasons for returning a position, OCC believes that there is an increased possibility that executing clearing members, including execution-only firms, will be required to make premium or margin settlement for a position before it can be closed out or otherwise managed. To address this possibility, OCC has proposed to increase its initial and minimum net capital requirements for all clearing members and to increase the minimum clearing fund deposit for execution-only firms. Initial required net capital would be increased from $1 million to $2.5 million, and minimum net capital would be increased from $750,000 to $2 million.[9] The minimum clearing fund deposit for execution-only firms would be increased from $150,000 to $150,000 plus $15 times the firm's average daily executed volume for the preceding calendar month.

To determine the amount of the increase in net capital requirements, OCC analyzed the instances when positions were carried in the accounts of execution-only clearing members for the twelve-month period ending July 31, 2003.[10] Based on that analysis, OCC determined that a minimum net capital of $2 million would have been sufficient to avoid any additional position related margin calls. Currently, minimum net capital is $750,000. Initial net capital historically has been set above the minimum net capital amount, and OCC has determined to set the initial net capital requirement at $2.5 million. Currently, initial net capital is $1 million. The increases are being applied to all clearing members because over 80% of OCC's clearing members are eligible to use the CMTA facility.

The special net capital requirements for firms providing facilities management services[11] and stock

[5] Certain exchanges submit matching trade information on a real time or intermittent basis during a trading day. OCC immediately processes such submissions and makes updated position information available for clearing member review throughout the day. For transactions effected on such exchanges, clearing members may be able to effect a return before OCC closes its window for the submission of returns, in which case the executing clearing member would be responsible for any premium or margin settlement.

[6] The clearing members have formed an ad hoc committee under the auspices of the Securities Industry Association to collaborate on a standard form agreement. That agreement is currently in draft form.

[7] There is no approval process associated with position transfers between clearing members to correct clearing errors. OCC determined not to include an approval process for such transfers based on discussions with clearing members during the development of ENCORE Release 3.0. Clearing members claimed that an approval process would be inefficient from an operational and administrative perspective, would increase system overhead, and would adversely affect their ability to review position changes on a timely basis.

[8] OCC has retained the right to terminate all CMTA arrangements of a suspended clearing member.

[9] These new capital standards are consistent with the capital requirements of other clearing organizations. For example, the Chicago Mercantile Exchange's initial net capital requirement is $2 million, while the Board of Trade Clearing Corporation is $2.5 million.

[10] The instances in which positions were carried in execution-only clearing members' accounts was relatively low with the greatest rate of "returned" positions for such firms was 4.11%.

[11] Proposed OCC Rule 309A [File No. SR–OCC–2003–09].

settlement services [12] are being increased proportionately. A firm providing such services will be required to have a minimum net capital of $4 million plus $200,000 times the number of firms over four that it services.

The proposed increases in OCC's net capital requirements will not be unduly burdensome. Only two OCC clearing members (one of which is an execution-only firm) maintain net capital below the proposed minimum of $2 million. (No firm that provides facilities management services or stock settlement services will be affected by the proposed increase for those firms.) Although clearing members will be given a one-year grace period from October 1, 2003, to achieve compliance with the new requirements, OCC's membership/margin committee shall have the discretion to extend that deadline to a date no later than October 1, 2006, for clearing members admitted to membership after the date that this proposed rule change is approved by the Commission, provided that such clearing members undertake not to engage in a CMTA execution business during the period of such extention.

Execution-only clearing members pose a special risk because they do not ordinarily carry position overnight and therefore do not ordinarily deposit margin with OCC. This means that if a position is returned to an execution-only member and if the execution-only member fails to make settlement, the only asset of the member that OCC can draw upon to liquidate the position is the member's clearing fund deposit. Today, execution-only members maintain the minimum clearing fund deposit of $150,000 because OCC's clearing fund requirements are based on positions maintained during the preceding month, and execution-only firms ordinarily do not maintain positions. To determine a new minimum clearing fund requirement for execution-only members, OCC analyzed executed trade activity for the four execution-only clearing members over a period where total volume was deemed to be within normal ranges and assessed the net price change risk (through simulation) of the contracts executed by the firms relative to average daily executed volume. Dividing net price change risk by average daily executed volume resulted in net risk per contract of $15.85. OCC proposes to increase the minimum clearing fund requirement for execution-only members to $150,000 plus $15 times average daily executed volume for the preceding month. Execution-only firms will also be given the one-year grace period described above to comply with this new minimum.

OCC also proposed to make conforming changes to the definitional provisions of its by-laws, qualification standards for admission, various financial responsibility rules, and the rule defining monthly contributions to the clearing fund.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it fosters the prompt and accurate clearance and settlement of securities transactions, the safeguarding of funds and securities, and the protection of investors and the persons facilitating transactions by and acting on behalf of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0069. 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–OCC–2003–11. 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 either hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at OCC's principal office and on OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/proposed_changes.jsp*. All submissions should refer to File No. SR–OCC–2003–11 and should be submitted by April 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5786 Filed 3–12–04; 8:45 am]

BILLING CODE 8010–01–P

[12] Proposed OCC Rule 309A [File No. SR–OCC–2003–09].

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft. The basis for the waiver is that no small business manufacturers are supplying this class of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Business Development Program.

DATES: This waiver is effective on March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at

(202) 205–7280; or by e-mail at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on January 12, 2004 to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft. In response, on February 4, 2004, SBA published in the **Federal Register** a notice of intent to grant the waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, no comments were received from any interested party. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft, NAICS 441229.

Authority: 15 U.S.C. 637(a)(17).

Dated: March 8, 2004.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–5705 Filed 3–12–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of termination of waiver of the Nonmanufacturer Rule for Small Arms Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is terminating the waiver of the Nonmanufacturer Rule for Small Arms Manufacturing based on our recent discovery of small business manufacturers for this class of products. Terminating this waiver will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or processor on such contracts.

DATES: This termination of waiver is effective on March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX (202) 205–7280; or by e-mail at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of product, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on the six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

SBA granted a waiver of the Nonmanufacturer Rule for Small Arms Manufacturing, based on its determination that no small business manufacturers were available to participate in the Federal market for this class of products. It was recently brought to SBA's attention by small business manufacturers and a SBA Procurement Center Representative that small business manufacturers exist for items within the Small Arms Manufacturing class of products, identified under the NAICS 332994. In response, on October 29, 2003, SBA published in the **Federal Register** a notice of intent to terminate the waiver of the Nonmanufacturer Rule for Small Arms Manufacturing. SBA explained in the notice that it had discovered the existence of small business manufacturers of that class of products. SBA did not receive any comments in response to the published notice. Accordingly, based on the available information, SBA has determined that there are small business manufacturers of this class of products, and is therefore terminating the class waiver of the Nonmanufacturer Rule for Small Arms Manufacturing, NAICS 332994.

Authority: 15 U.S.C. 637(a)(17).

Dated: March 8, 2004.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–5706 Filed 3–12–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cobb and Cherokee Counties, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed combined highway and Bus Rapid Transit (BRT) project on I–75 and I–575 in Cobb and Cherokee Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Boyd, Urban Transportation Engineer, FHWA, 61 Forsyth Street, SW., Suite 17T100, Atlanta, Georgia

30303, telephone: (404) 562–3651; Mr. Tony Dittmeier, Transportation Specialist, Federal Transit Administration, 61 Forsyth Street, SW., Suite 17T50, Atlanta, Georgia 30303, telephone (404) 562–3512; Mr. Harvey Keepler, State Environmental/Location Engineer, Georgia Department of Transportation, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone: (404) 699–4400; or Mr. Marvin Woodward, Director of Projects and Planning, Georgia Regional Transportation Authority, 245 Peachtree Center Avenue, NE., Suite 900, Atlanta, Georgia 30303, telephone: (404) 463–3099.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT), the Federal Transit Administration (FTA), and the Georgia Regional Transportation Authority (GRTA), will prepare an EIS on a proposal to extend High Occupancy Vehicle (HOV) lanes along Interstate 75 and 575 (I–75 and I–575). The HOV lanes would be extended on I–75 from Akers Mill Road to Wade Green Road. HOV lanes would also be constructed on I–575 from the I–75/I–575 Interchange to Sixes Road in Cherokee County. The proposed HOV lanes would accommodate the implementation of a Bus Rapid Transit (BRT) system with various transit stations along the I–75 corridor. Various design alternatives for both the HOV lanes and the BRT system will be studied.

In the May 15, 2003 **Federal Register** (volume 67, number 94), a notice of intent was issued by the FTA, in cooperation with the GRTA, to advise agencies and the public that an Alternatives Analysis (AA)/EIS was going to be prepared for a proposed transportation improvement in the metropolitan Atlanta region's northwest corridor. During the development of that AA by GRTA, it was determined that the appropriate course of action was to jointly develop a transportation improvement project with GDOT. A Locally Preferred Alternative (LPA) has been adopted by GDOT and GRTA and an EIS will be prepared based on that LPA.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings and a public hearing will be held. The draft EIS will be available for public and agencies review and comments prior to the public hearing. To ensure that the full range of issues related to this proposed project is addressed and all significant issues identified, formal scoping will be initiated. Additionally, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: March 9, 2004.

Walter E. Boyd,

Urban Transportation Engineer, FHWA, Atlanta, Georgia.

[FR Doc. 04–5741 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These ICRs pertain to 49 CFR part 214. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to parts 207, 209, 210, 212, 214, 215, 217, 218, 221, 223, 228, 232, 234, and 236. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved: (1) OMB No. 2130–0539, Railroad Worker Protection: Roadway Maintenance Machines (49 CFR Part 214) (Final Rule). The expiration date for this information collection is February 28, 2007. (2) OMB No. 2130–0558, Work Schedules and Sleep Patterns of Railroad Signalmen (Forms FRA F 6180.107/108). The expiration date for this information collection is October 31, 2006.

The following information collections were re-approved: (1) OMB No. 2130–0008, Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars) (Part 232). The new expiration date for this information collection is January 31, 2007. (2) OMB No. 2130–0017, U.S. DOT Crossing Inventory Form (Form FRA F 6180.71). The new expiration date for this information collection is July 31, 2006. (3) OMB No. 2130–0506, Identification of Cars Moved in Accordance with Order 13528). The new expiration date for this information collection is July 31, 2006. (4) OMB No. 2130–0526, Control of Alcohol and Drug Use in Railroad Operations (Part 219)(Forms FRA F 6180.73/74/94A/95B). The new expiration date for this information collection is February 28, 2007. (5) OMB No. 2130–0537, Railroad Police Officers (Part 207). The new expiration date for this information collection is September 30, 2006. (6) OMB No. 2130–0006, Railroad Signal System Requirements (Part 236) (Forms FRA F 6180.14/47). The new expiration date for this information collection is October 31, 2006. (7) OMB No. 2130–0502, Filing of Dedicated Cars (Part 215). The new expiration date for this information collection is September 30, 2006. (8) OMB No. 2130–0516, Remotely Controlled Operations (Part 218). The new expiration date for this information collection is October 31, 2006. (9) OMB No. 2130–0519, Bad Order and Home Shop Card (Part 215). The new expiration date for this information collection is September 30, 2006. (10) OMB No. 2130–0520, Stenciling Reporting Mark (Part 215). The new expiration date for this information collection is September 30, 2006. (11) OMB No. 2130–0527, Locomotive Certification (Noise Compliance

Regulations) (Part 210). The new expiration date for this information collection is September 30, 2006. (12) OMB No. 2130–0529, Disqualification Proceedings (Part 209). The new expiration date for this information collection is October 31, 2006. (13) OMB No. 2130–0534, Grade Crossing Signal System Safety (Part 234) (Form FRA F 6180.83). The new expiration date for this information collection is September 30, 2006. (14) OMB No. 2130–0035, Railroad Operating Procedures (Part 217). The new expiration date for this information collection is September 30, 2006. (15) OMB No. 2130–0523, Rear-End Marking Devices (Part 221). The new expiration date for this information collection is September 30, 2006. (16) OMB No. 2130–0535, Bridge Worker Safety Rules (Part 214). The new expiration date for this information collection is September 30, 2006. (17) OMB No. 2130–0509, State Safety Participation Regulations and Remedial Actions (Part 212) (Forms FRA F 6180.33/61/67/96/96A/109/110/111/112). The new expiration date for this information collection is November 30, 2006. (18) OMB No. 2130–0525, Certification of Glazing Materials (Part 223). The new expiration date for this information collection is November 30, 2006. (19) OMB No. 2130–0005, Hours of Service Regulations (Part 228) (Form FRA F 6180.3). The new expiration date for this information collection is December 31, 2006. (20) OMB No. 2130–0551, Regional Inspection Point Listing Forms. (Forms FRA F 6180.106(A)-(E)) The new expiration date for this information collection is January 31, 2007.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on March 9, 2004.

Maryann Johnson,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–5792 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16464; Notice 2]

The Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured from 1998 to 2003 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on December 3, 2003, in the **Federal Register** (68 FR 67739). NHTSA received no comments.

S6.5(f) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "the actual number of plies." Goodyear produced 37,980 LT265/75R16 Wrangler RT/s LR–E tires during the period from February 1, 1998 to May 31, 2003, which do not comply with FMVSS No. 119, S6.5(f). These tires were marked with 3 plies in the sidewall while there were actually 2 plies in the sidewall.

Goodyear stated that this error occurred when these tires replaced the previous tires that had 3 plies in the sidewall. The new tires were changed to 2 plies but the mold drawing and specification were not revised to reflect this change.

Goodyear believes that this noncompliance is inconsequential to motor vehicle safety because the tires meet or exceed all applicable FMVSS performance standards, and all markings related to tire service (load capacity, corresponding inflation pressure, load range, etc.) are correct. Goodyear asserts that the mislabeling noted above creates no unsafe condition.

The agency agrees with Goodyear's statement that the incorrect designation of 3 plies when there were actually 2 plies on each tire does not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

The agency believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls are not of steel cord construction, but are actually polyester, this potential safety concern does not exist.

In addition, the tires are certified to meet all the performance requirements of FMVSS No. 119. All other informational markings as required by FMVSS No. 119 are present. Goodyear has also corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–5744 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16463; Notice 2]

Hankook Tire America Corp., Grant of Petition for Decision of Inconsequential Noncompliance

Hankook Tire America Corp. (Hankook Tire) has determined that certain tires it produced in 2003 do not comply with S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, New pneumatic tires. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hankook Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30-day comment period, on December 3, 2003, in the **Federal Register** (68 FR 67739). NHTSA received no comments.

A total of approximately 3,049 tires are involved. These are 215/50R 17 91H 04PR H405 tires, which Hankook Tire produced during DOT weeks 16 through 21 and DOT weeks 24 and 25 of the year 2003. They have the nylon ply number mismarked on one side of the tire, specifically on the DOT serial side. The incorrect marking on the DOT serial side is "2 steel + 2 polyester + 2 nylon" and the correct marking on the opposite side is "2 steel + 2 polyester + 1 nylon." Paragraph S4.3 of FMVSS No. 109 requires "each tire shall have permanently molded into or onto both sidewalls * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different."

Hankook Tire believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. The petitioner states that first, the affected tires meet all requirements of 49 CFR 571.109 except for the markings pertaining to S4.3(e), and second, the markings on the side of the tire opposite the DOT serial side are correct.

The agency agrees with Hankook Tire's statement that the incorrect markings do not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in the tire.

The agency believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, the steel used in the construction of the tires is properly labeled.

In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109. Also, the markings on the side of the tire opposite the DOT serial side are correct. All other informational markings as required by FMVSS No. 109 are present. Hankook Tire has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Hankook Tire's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–5745 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16656; Notice 2]

Hyundai America Technical Center, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Hyundai America Technical Center, Inc. (Hyundai), has determined that the rims on certain vehicles that it produced in 2000 through 2003 do not comply with S5.2(a) and S5.2(c) of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for motor vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hyundai has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Hyundai's petition was published, with a 30 day comment period, on December 15, 2003, in the **Federal Register** (68 FR 69768). NHTSA received no comments.

S5.2 of FMVSS 120 requires that each rim be marked with certain information on the weather side, including S5.2(a): A designation which indicates the source of the rim's published nominal dimensions, and S5.2(c): the symbol DOT. Hyundai produced approximately 250,348 model year 2001, 2002, 2003 and 2004 Hyundai Santa Fe 4 door multipurpose passenger vehicles between March 31, 2000 and October 1, 2003, with rims that do not contain the markings required by S5.2(a) or S5.2(c).

According to Hyundai, the affected rims, 6.5J x 16" aluminum alloy, are commonly available and utilized in the United States. They are a correct specification for mounting the P225/70R16 tires specified for all Santa Fe models, and are capable of carrying the GVWR of the vehicle. Hyundai states that no accidents or injuries have occurred, and no customer complaints have been received, related to the lack of the markings or any problem that may have resulted from the lack of the markings. Hyundai further states that the missing markings do not affect the performance of the wheels or the tire and wheel assemblies.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety. The rims are marked in compliance with S5.2(b) rim size designation; S5.2(d) manufacturer identification; and S5.2(e) month, day and year or month and year of manufacture. The rims are also marked with the Hyundai part number. The tire

size is marked on the tire sidewalls, and the owner's manual and tire inflation pressure label contain the appropriate tire size to be installed on the original equipment rims. Therefore, there is little likelihood of a tire and rim mismatch as a result of the missing rim markings. With regard to the omission of the "DOT" symbol, the agency regards the noncompliance with paragraph S5.2(c) as a failure to comply with the certification requirements of 49 U.S.C. 30115, and not a compliance failure requiring notification and remedy.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Hyundai's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–5743 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16699; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin), has determined that certain tires it manufactured do not comply with S4.3(d) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30 day comment period, on December 22, 2003, in the **Federal Register** (68 FR 71222). NHTSA received no comments.

Michelin produced approximately 8,568 Michelin Pilot XGT H4 tires, size P195/65R15, whose sidewall labeling, on one side of the tire only, incorrectly describes the generic name of the cord material in one of the plies in the tread area. These tires were marked on one side as "Tread plies: 1 polyester + 1 polyamide/steel + 2 steel. Sidewall plies: 1 polyester." The correct marking is "Tread plies: 1 polyester + 1 polyamide + 2 steel. Sidewall plies: 1 polyester." The like marking on the opposite sidewall is correct in all respects. Therefore, they do not comply with FMVSS No. 109 S4.3(d), which requires that "each tire shall have permanently molded into or onto both sidewalls * * * (d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire."

Michelin believes that this noncompliance is inconsequential to motor vehicle safety. It asserts that in all other respects, the tires meet or exceed the requirements of FMVSS No. 109, including all of the performance requirements. It further asserts that the noncompliance with S4.3(d) will have no impact on the performance of the tire on a motor vehicle, or upon motor vehicle safety.

The agency agrees with Michelin's statement that the incorrect markings do not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on tire cord material.

The safety of people working in the tire retread, repair, and recycling industries must also be considered. The agency believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The primary safety concern of these industries is whether or not steel cord construction is used in the sidewall and tread of the tires. In this case, the labeling on both sides of the tire correctly indicates that steel is used in the construction of the tires.

In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109. Also, the markings on one side of the tire are correct. All other informational markings as required by FMVSS No. 109 are present. Michelin has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–5742 Filed 3–12–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–25–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–25–94 (T.D. 8686), Requirements to Ensure Collection of Section 2056A Estate Tax (§ 20.2056A–2).

DATES: Written comments should be received on or before May 14, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111

Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Requirements to Ensure Collection of Section 2056A Estate Tax.

OMB Number: 1545–1443.

Regulation Project Number: PS–25–94.

Abstract: This regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under Internal Revenue Code section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,390.

Estimated Time Per Respondent: 1 hour, 23 minutes.

Estimated Total Annual Burden Hours: 6,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5825 Filed 3–12–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8332

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8332, Release of Claim to Exemption for Child of Divorce or Separated Parents.

DATES: Written comments should be received on or before May 14, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.

OMB Number: 1545–0915.

Form Number: Form 8332.

Abstract: This form is used by a custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 33 minutes.

Estimated Total Annual Burden Hours: 82,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5826 Filed 3–12–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 50
Monday, March 15, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[Region 2 Docket No. VI–5–265 W, FRL–7627–3]

An Exemption From the Requirements of the Clean Air Act for the Territory of United States Virgin Islands; Withdrawal of Direct Final Rule

Correction

In rule document 04–4386 appearing on page 9216, in the issue of Friday, February 27, 2004, make the following correction:

On page 9216, in the first column, in the third line, the CFR part number is corrected to read as set forth above.

[FR Doc. C4–4386 Filed 3–12–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
March 15, 2004

Part II

Department of the Interior

Bureau of Reclamation

Colorado River Water Delivery Agreement—Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions, Colorado River, Arizona, California and Nevada; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Water Delivery Agreement—Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions, Colorado River, Arizona, California and Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of a Record of Decision for the Colorado River Water Delivery Agreement—Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions Final Environmental Impact Statement.

SUMMARY: The Bureau of Reclamation (Reclamation) published a **Federal Register** notice on November 8, 2002 (67 FR 68166) which informed the public of the availability of the Final Environmental Impact Statement on the "Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions" (Final IA EIS). Execution of the Implementation Agreement (IA) would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA, to enable certain southern California water agencies to implement the proposed California Quantification Settlement Agreement. Subsequent to the filing of the Final IA EIS, the IA described in that document was renamed and redrafted and is now titled the "Colorado River Water Delivery Agreement." We are now notifying the public that the Secretary signed the Record of Decision (ROD) on October 10, 2003. The text of the ROD is provided below.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins by telephone at (702) 293–8414, faxogram (702) 293–8156. The ROD is also available for viewing on the Internet at *http://www.usbr.gov/lc/region/lcrivops.html.*

Dated: February 5, 2004.

Gale A. Norton,

Secretary, Department of the Interior.

Record of Decision

Colorado River Water Delivery Agreement—Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions; Final Environmental Impact Statement

I. Introduction

On December 21, 1928, Congress conditioned ratification of the Colorado River Compact of 1922, construction of Boulder (now Hoover) Dam, and authorization of the Boulder Canyon Project Act as follows:

"[T]he State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the [six] States, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use * * * of water of and from the Colorado River for use in the State of California * * * shall not exceed four million four hundred thousand acre feet." [1]

By execution of this Record of Decision, and implementation of the Colorado River Water Delivery Agreement, California will take specific, incremental steps to fulfill this promise.

The Supreme Court has found that the Secretary of the Interior (Secretary) is vested with the responsibility of managing the mainstream waters of the lower Colorado River pursuant to Federal law. This document constitutes the Record of Decision (ROD) of the Department of the Interior regarding the preferred alternative for the Colorado River Water Delivery Agreement (Water Delivery Agreement), Inadvertent Overrun and Payback Policy (IOP) and related Federal actions.

Reclamation, as the agency designated to act on the Secretary's behalf with respect to these matters, is the lead Federal agency for purposes of National Environmental Policy Act (NEPA) compliance. The Final Environmental Impact Statement—Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions dated October 2002 (INT–FES–02–35) (Final IA EIS) was prepared pursuant to NEPA, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] Parts 1500 through 1508), Department of Interior Policies, and Reclamation's NEPA procedures implementing these regulations. The Final IA EIS described the potential environmental impacts from execution of an Implementation Agreement (IA),[2] adoption of the IOP, and implementation of biological conservation measures that would offset potential impacts to listed species on the Colorado River from the proposed water transfers. The Final IA EIS was filed with the U.S. Environmental Protection Agency (EPA) on November 1, 2002, and noticed by EPA and Reclamation in the **Federal Register** on November 8, 2002. The Federal actions called for in the Water Delivery Agreement are the same as those contained in the draft IA, and analyzed in the Final IA EIS (*see* section V below). For the remainder of this document, reference will be made to the Water Delivery Agreement, unless the notation is specific to the draft IA.

II. Decision

This document effects the approval of the following Federal actions: [3]

A. Execution of the proposed Water Delivery Agreement;

B. Adoption of the proposed IOP described in the Final IA EIS and originally noticed in the **Federal Register** as a proposed draft policy on January 18 and March 9, 2001; and

C. Implementation of biological conservation measures identified in the U.S. Fish and Wildlife Service (Service) January 2001 Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements for California Water Plan Components, and Conservation Measures on the Lower Colorado River, and the Service's December 2002 Biological Opinion on Bureau of Reclamation's Voluntary Fish and Wildlife Conservation Measures and Associated Conservation Agreements with the California Water Agencies.

III. Background

Under the Boulder Canyon Project Act, and the Decree entered by the U.S. Supreme Court in *Arizona* v. *California*, in 1964 California has a legal right in normal years to 4.4 million acre-feet (MAF).[4] California has historically been legally diverting more than its normal year apportionment of 4.4

[1] Boulder Canyon Project Act, § 4(a), 43 U.S.C. 617c(a).

[2] Subsequent to the filing of the Final IA EIS, the IA described in that document was renamed and redrafted and is now titled the "Colorado River Water Delivery Agreement" (Water Delivery Agreement). The Water Delivery Agreement therefore replaces the IA. As with the IA, the function of the Water Delivery Agreement is to address any contracting requirements applicable to the Boulder Canyon Project Act of 1928, and implements quantification and transfers of Colorado River water. The Water Delivery Agreement also serves as a quantification settlement agreement for purposes of section 5(B) of the Interim Surplus Guidelines. The Water Delivery Agreement is different from and, from a Federal perspective, much improved on the IA in a number of important respects: the Water Delivery Agreement is effective upon execution; it does not contain conditions precedent or subsequent that could terminate its effectiveness; and, it does not provide for early termination. Thus, the Water Delivery Agreement provides certainty regarding water entitlements that are necessary for continued effective implementation of the Secretary's responsibilities as Water Master on the lower Colorado River. Importantly, these agreements are consensual agreements among the parties and therefore are more likely to remain effective as compared with alternative regulatory based approaches.

[3] This recommendation contemplates that Departmental officials will simultaneously execute a number of complementary agreements which will collectively implement the provisions of the Water Delivery Agreement. Included in this suite of agreements are the following: this Record of Decision, the Colorado River Water Delivery Agreement, the Allocation Agreement (regarding conservation of water from the All-American and Coachella canal lining projects); two agreements relating to Supplemental Water and the Conveyance of Water for the San Luis Rey Settlement Parties; two agreements relating to implementation of species conservation actions; and a contract amendment with the Coachella Valley Water District. These related agreements do not cause incremental environmental impacts in addition to those described in the Final IA EIS and the supplemental memorandum referenced in Section 5 of this ROD, but only serve to implement various aspects of the water transfers. Where appropriate, the Final IA EIS and this ROD make commitments for subsequent environmental compliance for Federal actions to be carried out pursuant to the Agreements.

[4] California's basic apportionment may, on an annual basis, be augmented by access to surplus apportionment or unused apportionment.

MAF of Colorado River water. Prior to 1996, California's demands in excess of 4.4 million acre-feet per year (MAFY) were met by diverting unused apportionments of other Lower Division States (Arizona and Nevada) that were made available by the Secretary under applicable provisions of the Decree. Since 1996, California also has utilized surplus water pursuant to Art. II(B)(2) of the Decree as made available by Secretarial determinations contained in the Annual Operating Plans for Colorado River Reservoirs. The other Lower Division States have reached full utilization of their apportionments, and declared surpluses of Colorado River water are expected to diminish in future years. California, therefore, needs to reduce its consumptive use of Colorado River water to its 4.4 MAF apportionment in normal years.

In a major step toward achieving this goal, the California water agencies consisting of Coachella Valley Water District (CVWD), Imperial Irrigation District (IID), and The Metropolitan Water District of Southern California (MWD), developed a draft Quantification Settlement Agreement (QSA). The QSA is a proposed agreement among CVWD, IID, and MWD to quantify each entities' portion of California's apportionment of Colorado River water and to transfer Colorado River water among the California agencies. These transfers are for the benefit of IID, CVWD, MWD, and the San Diego County Water Authority (SDCWA). The QSA water transfers would continue for a period of up to 75 years and provide an important mechanism to assist California's efforts to reduce its diversions of Colorado River water in normal years to its 4.4 MAF apportionment, as required by the Boulder Canyon Project Act of 1928 and the California Limitation Act of March 4, 1929.

The QSA water transfers are implemented by the Water Delivery Agreement, an agreement among CVWD, IID, MWD, SDCWA, and the Secretary. The Water Delivery Agreement serves a number of complementary functions. During its term, the Water Delivery Agreement implements a quantification of Priority 3(a) entitlements. As such, this agreement serves as a Federal quantification agreement. As noted above, the Water Delivery Agreement addresses requirements applicable to the Boulder Canyon Project Act of 1928. The Water Delivery Agreement specifies the Federal actions that are necessary to implement the QSA. Execution of the Water Delivery Agreement would effectuate the changes in the amount and/or location of deliveries of approximately 400 thousand acre-feet per year (KAFY) of Colorado River water.

The Water Delivery Agreement also includes provisions that are intended to facilitate California's reduction of its historic overuse of Colorado River supplies and provide greater certainty with regard to future Colorado River operations.[5] The Federal objective in executing the Water Delivery Agreement is to achieve actual implementation of the identified transfers and scheduled reductions in California's agricultural water use. In particular, Paragraph 8 of the Water Delivery Agreement was carefully constructed to address future Boulder Canyon Project Act administration if the Quantification Settlement Agreement and associated transfers proceed as contemplated by all parties, including: adoption of a policy regarding prospective inadvertent overruns of Colorado River diversions (¶ 8.b.1), an extension of the repayment period for past overruns of Colorado River diversions (¶ 8.b.1), and provisions regarding the anticipated annual reviews pursuant to 43 CFR Pt. 417 through December 31, 2037 (¶ 8.b.2).[6]

Paragraph 8 also provides certain consequences in the event that the QSA and the associated transfers are not carried out as anticipated by the parties. These consequences include: suspension of a policy regarding prospective inadvertent overruns of Colorado River diversions (¶ 8.c.1), a reduced period for repayment of past overruns of Colorado River diversions (¶ 8.c.2), mandatory forbearance by The Metropolitan Water District from accessing any surplus Colorado River water otherwise available pursuant to sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines (¶ 8.c.3), and provisions regarding the anticipated annual reviews of water orders pursuant to 43 CFR Pt. 417 through December 31, 2037 (¶ 8.c.4).

In addition, under the Water Delivery Agreement, the Secretary adopts the IOP as set forth in section IX(A) below. The IOP establishes requirements for payback of any inadvertent overuse of Colorado River water by users in the Lower Division States.

The primary objective of the IOP policy is to insure operational compliance with the applicable provisions, and limitations on use of Colorado River water, as set forth in the Decree. Repayment of any overuse of Colorado River water, in accordance with the structured repayment schedule, insures that the system is repaid for inadvertent overuse. Prior to adoption of the IOP, contractors of Colorado River water were required to repay any overuse of water beyond annual approved quantities, *see e.g.*, 1992–1996 Annual Operating Plans for Colorado River Reservoirs, Supplement to 1992 Annual Operating Plan (Nov. 22, 2002). Adoption of the IOP formalizes this requirement and provides for specific payback (or repayment) periods which are linked to hydrological conditions on the Colorado River. *See, e.g.*, IOP at sec. 6, infra. This linkage to hydrologic conditions on the Colorado River, primarily by reference to elevations of Lake Mead, is consistent with efforts by Reclamation to further develop objective operational guidance for lower Colorado River operations. In particular, this approach was the basis for the Secretary's adoption of Interim Surplus Guidelines which determine available surplus quantities pursuant to Art. II of the Decree in *Arizona* v. *California* based on Lake Mead elevations and projected hydrological conditions on the Colorado River. *See, e.g.*, ISG at Section 2 ("Determination of Lake Mead Operation during the Interim Period.").

These two actions, as well as the implementation of biological conservation measures from two Service Biological Opinions (BO), are the Federal actions described in the Final IA EIS.

IV. Alternatives Considered in the Final IA EIS

In the Final IA EIS, the proposed action was described as the execution of the IA, adoption of the IOP, and implementation of the biological conservation measures. For each element of the proposed Federal action, a No Action alternative was considered, and for the IOP, one action alternative was considered in addition to the proposed IOP. No other action alternatives were considered for the reasons described below. Because of the important benefits to the entire Colorado River Basin of reducing California's over-reliance on the Colorado River,[7] and while

[5] The California agencies did not execute the QSA by December 31, 2002 in compliance with the relevant provisions of Section 5(B) of the Interim Surplus Guidelines (ISG). As a result the Secretary automatically suspended application of Sections 2(B)(1) and 2(B)(2) of the ISG as provided in the 2003 Annual Operating Plan. *See, e.g.*, Notice of Assistant Secretary Bennett W. Raley regarding Section 5 of Interim Surplus Guidelines. 67 FR 41733–35 (June 19, 2002). The Water Delivery Agreement serves as the quantification agreement for purposes of section 5(B) of the ISG and accordingly, section 7 of the Water Delivery Agreement provides for reinstatement of interim surplus determinations under Sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines. This Record of Decision does not modify in any manner the Record of Decision for the Interim Surplus Guidelines, including the Secretary's authority to monitor prospective compliance with Section 5 of the Interim Surplus Guidelines.

[6] Like the draft IA, the Water Delivery Agreement addresses the reasonable and beneficial use of Colorado River water. This provision, in particular, required significant discussions and negotiations among the parties to the Water Delivery Agreement. Resolution of this issue was of particular importance in light of the ongoing *Imperial Irrigation District* v. *United States* litigation involving all parties to the Water Delivery Agreement with the exception of the San Diego County Water Authority (*see also* Water Delivery Agreement at ¶¶ 10.a., 10.b.). Imperial Irrigation District had sought certainty both with respect to future inquiries in this regard and with respect to future approvals of water orders. The Department did not acquiesce to this request, and does not believe that such an approach is compatible with provisions of applicable Federal law. In this regard, the Department concurs with the statement of the California Board of Water Resources (SWRCB) in a similar context, that "we do not intend to bind the SWRCB in any future proceeding, particularly if circumstances change. To do so would be an abdication of the SWRCB's ongoing responsibility to prevent the unreasonable use of water." State of California, State Water Resources Control Board, Order WRO 2002–0013 (Revised), at 81 (Dec. 20, 2002). Similar concerns informed the negotiations by the Department regarding ¶ 8 of the Water Delivery Agreement. *See, e.g.*, 43 U.S.C. 372. Ultimately, clarification and agreements with the parties to the Water Delivery Agreement are incorporated in ¶ 8 with respect to the circumstances and analyses that will be considered during the term of the Agreement.

[7] For example, the Final EIS for adoption of Colorado River Interim Surplus Criteria stated the findings of the Secretary as follows: "As a result of operating experience over recent years, it is clear that one of the most important issues for Colorado River management is the need to bring use of Colorado River water into alignment with the allocation regime adopted by Congress in section 4

Continued

avoiding the impacts of a more precipitous reduction in California's Colorado River diversions, the proposed action is considered the environmentally preferred alternative.

A. Implementation Agreement

1. *Proposed Action.* Under the proposed IA, the Secretary would commit to certain actions required to facilitate implementation of the QSA.[8] Chief among these is the change in location of the delivery point of Colorado River water to the QSA parties. The IA would result in a change in the amount of water the Secretary would deliver to MWD's diversion point at Lake Havasu (above Parker Dam), and CVWD's and IID's diversion point at Imperial Dam. In a "normal" year under Art. II(B)(1) of the Decree, in aggregate, deliveries to Imperial Dam would be reduced by as little as approximately 200 to as much as approximately 400 thousand acre-feet (KAF), and this water would instead be delivered to the MWD facility at Lake Havasu. Therefore, there would be a reduction in flow in the Colorado River of this same amount of Colorado River water from Parker Dam to Imperial Dam. As part of the QSA, IID would implement agricultural water conservation measures (including land fallowing) to conserve as much as 300 KAFY, and an equal amount of Colorado River water would be transferred to SDCWA, CVWD, and/or MWD.

2. *No Action.* Because execution of the IA (now styled as the Water Delivery Agreement) is required to enable full implementation of the QSA, under No Action in the Final IA EIS, neither the IA nor the QSA would be implemented. The Secretary would continue to make Colorado River water deliveries subject to the Law of the River, including the existing priority system, Section 5 contracts, and determinations identified in the ISG ROD. Significant unresolved issues would remain regarding how Colorado River water would be delivered to the participating agencies within the California's normal year diversion limit of 4.4 MAF of Colorado River water. This 4.4 MAF limit required by applicable provisions of Federal law, would involve a reduction of approximately 600 KAFY from the 1990 to 1999 average Colorado River diversion for the State of California.[9]

3. *Implementation Agreement Alternatives Considered in the EIS.* Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the California parties, no other action alternatives were considered. Accordingly, any other action alternative would have entailed provisions unacceptable to one or more of the parties, and therefore would not have constituted a reasonable and feasible alternative for NEPA purposes.

B. Inadvertent Overrun Policy

1. *Proposed Action.* The IOP component of the proposed action includes adoption of a policy that would identify and define inadvertent overruns of approved diversions of Colorado River water by lower Basin Colorado River contractors, establish procedures that account for inadvertent overruns, and define subsequent mandatory payback requirements to allow repayment to system storage for any inadvertent overruns. It is not anticipated that it would be necessary to materially modify the IOP for a 30-year period absent extraordinary circumstances such as significant Colorado River infrastructure failures. The IOP would be applicable to all lower Basin States users with quantified entitlements. The adoption of the IOP does not affect nor is it applicable to the United States' obligations under the 1944 Treaty with the Republic of Mexico.

Under the provisions of the IOP, an inadvertent overrun is defined as Colorado River water that is diverted, pumped, or received by an entitlement holder in excess of the water user's entitlement for that year. Under the IOP, payback would be required to begin in the calendar year that immediately follows the release date of the final Decree Accounting Record [10] that reports inadvertent overruns for a Colorado River water user. Prior to the beginning of the calendar year, the user's water order, along with the payback plan, and the user's existing Reclamation-approved conservation plan, would be submitted to Reclamation for review and approval within the annual 43 CFR Pt. 417 process regarding annual water order approvals.

2. *No Action.* Under the No-Action Alternative, the IOP would not be adopted, and Reclamation would enforce its obligations under the Decree to ensure that no Colorado River water user exceeds its entitlement amount. Currently, diversions of Colorado River water are reported monthly for most water users, and Reclamation releases a monthly cumulative tabulation of the year's diversions and return flows. In enforcing its obligations under the Decree, Reclamation may reduce deliveries for those water users who would overrun based on diversions to date and projected diversions for the remainder of the year, and/or stop deliveries for water users who are at their entitlement amount. However, due to the nature of measurement, reporting, and accounting practices, there would continue to be some level of inadvertent overruns.

3. *IOP Alternatives.* Many alternative concepts were considered in the development of the proposed IOP. Much interest and many ideas were identified during the scoping process and in response to the draft policy published in the **Federal Register**. As a result of public comments, one additional IOP alternative, No Forgiveness During Flood Releases Alternative, was developed and considered in the EIS. The proposed IOP contains a provision that in a year during which the Secretary makes a flood control release or a space-building release pursuant to the Water Control Manual for Hoover Dam, Lake Mead, any accumulated amount in an overrun account would be forgiven. The No Forgiveness Alternative would eliminate that provision. Under this alternative, during a flood control or space-building release year, the overrun account would be deferred, but not forgiven. Payback would resume in the next year when such flood control or space-building releases is not scheduled. All other provisions in this alternative would be the same as the proposed IOP.

C. Implementation of Biological Conservation Measures

1. *Proposed Action.* This component of the proposed action involves implementation of biological conservation measures from two Service BOs. The first, dated January 2001 (Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary Arizona, California, and Nevada), addresses potential impacts from the proposed change in point of diversion that could occur to federally-listed fish and wildlife species or their associated critical habitats within the historic floodplain of the Colorado River between Parker Dam and Imperial Dam. The conservation measures related to the water transfers include stocking of listed Razorback suckers in the lower Colorado River, restoration or creation of 44 acres of backwaters along the Colorado River between Parker Dam and Imperial Dam, provision of funding for capture and rearing efforts for listed Bonytail chubs from Lake Mohave, and a two-tiered conservation plan to minimize potential effects to occupied habitat of the listed Southwestern willow flycatcher on the Colorado River between Parker and Imperial Dams.

Based on the concern that IID would not be able to complete work necessary to obtain "take" authorization for effects of its proposed QSA-related water conservation actions through a Section 10 Habitat Conservation Plan (HCP) process by December 31, 2002, Reclamation, in July 2002, voluntarily submitted a Biological Assessment (BA) to the Service on a proposed voluntary species conservation program (Biological Assessment of Reclamation's Proposed Section 7(a)(1) Conservation Measures for Listed Species in the Imperial Irrigation District/Salton Sea Areas). This voluntary species conservation program serves as an alternative means for obtaining the necessary "take" authorization for the relevant California agencies under the ESA for IID's water conservation actions. The BA, prepared on a voluntary basis by Reclamation, included voluntary species conservation measures to address listed species in the IID/Salton Sea area that could be affected by water conservation actions taken by IID pursuant to the QSA. The conservation measures included beneficial measures for the Desert pupfish, Yuma clapper rail, Southwestern willow flycatcher, and California brown pelican.

The Final IA EIS addresses the conservation measures from both the 2001

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of the Boulder Canyon Project Act of 1928." Interim Surplus Criteria FEIS, Vol. III at p. 2 (citations omitted).

[8] For consistency purposes, this section refers to the IA, the title of the principal Federal agreement at the time the Final IA EIS was published. As noted above, the IA has been renamed and replaced by the Water Delivery Agreement.

[9] *See, e.g.*, the Colorado River Compact of 1922, the Boulder Canyon Project Act of 1928, *Arizona* v. *California* 1964 Supreme Court Decree [Decree], and the Long-Range Operating Criteria.

[10] These records are published as: Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in *Arizona* v. *California, et. al.*, dated March 9, 1964.

BO and Reclamation's 2002 BA. The Final IA EIS indicates that as detailed plans are developed and specific land-disturbing activities are identified, Reclamation will determine and carry out supplemental NEPA compliance evaluations, for Federal implementation of the conservation measures, as appropriate.

2. *No Action.* Under the No-Action Alternative in the Final IA EIS, the biological conservation measures identified for the 2001 BO would not be implemented. Reconsultation with the Service would be required prior to any additional required Federal approvals to effectuate any additional changes in point of delivery and diversion from the lower Colorado River.

3. *Alternatives to Biological Conservation Measures.* No alternatives to the biological conservation measures identified in the 2001 BO or 2002 BA were considered in the EIS. If Reclamation was unable to implement these measures as proposed, reinitiated consultation with the Service would be required.

V. Analysis of Post-Final IA EIS QSA Revisions

Subsequent to the filing of the Final IA EIS, on December 18, 2002, the Service issued its final BO (Biological Opinion on the Bureau of Reclamation's Voluntary Fish and Wildlife Conservation Measures and Associated Conservation Agreements with the California Water Agencies for Listed Species in the Imperial Irrigation District/Salton Sea Areas). The measures described in the Final BO were refined and improved from those Reclamation described in its July 2002 Biological Assessment and included in its October 2002 Final IA EIS, particularly with respect to the California brown pelican.

In addition, in September 2003, the California water agencies finalized the terms of the QSA, and came to agreement with the Department of the Interior regarding terms of the Water Delivery Agreement, which replaced the draft IA.

The final terms of these documents resulted in minor changes to the water delivery ("ramp-up") schedule for the transfer of water from IID to SDCWA and from IID to CVWD. In general, there would be a decrease in the transfer of water to SDCWA during the first 18 years and a slight increase in years 19 and 20. There is a decrease in the water delivered to CVWD during the first 17 years and a slight increase through year 45. These changes to the QSA water transfers were made in an effort to avoid material impact to the salinity of the Salton Sea for a 15-year period, in order to assist the California agencies to comply with State legislation and California Department of Fish and Game (CDFG) permitting requirements under State law.

In addition, the Water Delivery Agreement: (1) Provides for additional water conservation by IID (not to exceed 145 KAF total) if needed to meet ISG agricultural benchmark reduction targets in 2006, 2009, and 2012; (2) reflects transfer of the water conserved by lining the All-American and Coachella Canals to San Diego instead of MWD; and (3) provides a schedule for payback of 2001 and 2002 Colorado River water overruns.

Reclamation evaluated the environmental impacts associated with the final 2002 BO and all of the refinements to the QSA/Water Delivery Agreement in a memorandum dated October 9, 2003. As a result of its evaluation, Reclamation concluded that the minor changes in environmental impact were within the scope of the Final IA EIS, and that no supplemental NEPA compliance documentation was required.

VI. Basis for Decision

Reclamation has selected the proposed Water Delivery Agreement and IOP based on the need to reduce California's consumptive use of Colorado River water to its apportionment of 4.4 MAF in a normal year. In conjunction with the ISG, the proposed Water Delivery Agreement will gradually reduce California's over-reliance on Colorado River water and bring the State's use of Colorado River water into alignment with its allocation under the applicable provisions of the Law of the River, specifically the BCPA.[11]

The QSA is a consensual agreement among the three parties (IID, CVWD, and MWD) that resolves longstanding disputes regarding the priority, use (including quantification), and transferability of Colorado River water. The QSA was developed in response to the Secretary's insistence that California must implement a strategy that enables the State to limit its use of Colorado River water to 4.4 MAF during a normal year, or develop the means to meet its water needs from sources that do not jeopardize the delivery of Colorado River water to other States. The proposed Water Delivery Agreement implements the Federal water delivery components of that consensual agreement.

This historic agreement among the California parties is considered the best approach to achieve a timely and lasting reduction of California's overuse of Colorado River water. In the absence of this consensual agreement, it is clear that alternative approaches would have entailed provisions unacceptable to one or more of the parties. In fact, the differences among the parties have plagued efforts to resolve these issues since 1931. Moreover, a continued failure to adopt a plan in compliance with the structured reductions provided in section 5 of the ISG would require the Secretary to continue to enforce the precipitous reduction in available supplies from the Colorado River that California experienced during this calendar year. These factors were specifically considered by the Secretary as the basis for this decision.

The IOP will provide a mechanism for payback to the Colorado River system from inadvertent over-use of Colorado River water by entitlement holders, thus keeping system storage whole in spite of overruns, which are inevitable to some degree.

In making its decision, Reclamation carefully evaluated environmental impacts on the river system that are anticipated to result from the change in point of delivery and diversion from water transfers identified in the Water Delivery Agreement. This evaluation involved review of river stage impacts (change in water surface elevation), reservoir storage impacts (Lake Mead and Lake Powell), change in frequency and magnitude of flood control releases, and any potential transboundary impacts.

Reclamation has elected to implement all of the biological conservation measures included in the 2001 BO. Reclamation and the California water agencies, through execution of a Conservation Agreement, have agreed to implement all the biological conservation measures identified in the 2002 BO.

VII. Environmental Commitments

The Final IA EIS describes the impacts of the Federal action on the Colorado River, such as changes in flow and reservoir storage. The Final IA EIS also summarizes and incorporates by reference analyses of off-river impacts that would result from actions taken by the QSA participating agencies as a result of implementing the QSA. This is because the changes in water deliveries agreed to by the Secretary in the Water Delivery Agreement will enable the QSA to be fully implemented.

It is important to recognize that while the EIS describes the off-river impacts of actions taken by the QSA participating agencies, it does not "federalize" those actions, nor does it create a requirement for supplemental NEPA compliance for those actions. The Department recognizes that the non-Federal actions carried out by the participating California agencies pursuant to the QSA will need to comply with the California Environmental Quality Act (CEQA), California Endangered Species Act, and other State and local requirements. Toward that end, the California participating agencies prepared a Programmatic Environmental Impact Report (PEIR) for the QSA (Implementation of the Colorado River Quantification Settlement Agreement, June 2002), CVWD prepared a PEIR for the Coachella Valley Water Management Plan (Coachella Valley Water Management Plan and State Water Project Entitlement Transfer PEIR, October 2002), and an EIR/EIS was prepared for the IID Water Conservation and Transfer Project, October 2002, pursuant to these State and local requirements.[12]

The following environmental commitments are those relating to the proposed Federal action affecting water diversions and reservoir storage. Based on the impact analysis, mitigation measures were determined not to be necessary, and none are proposed, for land use, recreation, agricultural resources, socioeconomics, environmental justice, or transboundary impacts. Implementation of environmental commitments from the CEQA documents relating to actions taken by the QSA parties is the exclusive responsibility of those California parties.

A. Hydrology/Water Quality/Water Supply. The biological conservation measures included as part of the proposed action (from the January 2001 BO) were developed to mitigate impacts in the changes in point of

[11] *See, e.g.*, Final EIS Interim Surplus Criteria at § 1.3.2.1.

[12] This EIR/EIS included a proposed HCP to address IID's identified actions. Efforts to finalize an HCP have not been completed as of the date of this Record of Decision.

delivery of Colorado River water. The changes in point of delivery result in reduced flows from Parker Dam to Imperial Dam. Implementation of all biological conservation measures would be subject to site-specific NEPA review. Mitigation measures specifically related to implementation of biological conservation measures would be developed as part of such site-specific review. The conservation measures related to river-flow reductions are described in detail in the Service's January 2001 BO, and are summarized below.

1. Reclamation would stock 20,000 Razorback suckers, 25 centimeters (cm) or greater in length, into the Colorado River between Parker and Imperial Dams. This stocking effort would be a continuation of present efforts and would bring the total number of razorbacks of 25 cm or greater in length stocked below Parker Dam to 70,000. These stocking efforts would be completed by 2006.

2. Reclamation would restore or create 44 acres of backwaters along the Colorado River between Parker Dam and Imperial Dam. This effort could include restoring existing decadent backwaters for which no ongoing effort provides funding or responsibility for restoration, or the creation of new backwaters where water availability, access, and other considerations can be met. Maintenance of these backwaters for native fish and wildlife would be ensured for the life of the water transfers. This backwater restoration and/or creation effort would be completed within 5 years of the first water transfers under the QSA (excluding the ongoing water transfer under the IID/MWD 1988 Agreement and subsequent agreements).

3. Reclamation would provide $50,000 in funding for the capture of wild-born or first generation (F1) Bonytail chubs from Lake Mohave to be incorporated into the broodstock for this species and/or to support rearing efforts at Achii Hanyo, a satellite rearing facility of Willow Beach National Fish Hatchery. These efforts would be funded for 5 years.

4. A two-tiered conservation plan has been developed to minimize potential effects to occupied Southwestern willow flycatcher habitat that could result from reduced flows on the Colorado River between Parker and Imperial Dams as water transfers and associated changes in point of delivery are implemented. The details of the Plan may be found in the 2001 BO in Appendix E of the Final IA EIS.

B. Biological Resources—Vegetation. Implementation of biological conservation measures described above would mitigate impacts to vegetation along the river.

C. Biological Resources—Fish and Wildlife. Implementation of biological conservation measures described above would mitigate impacts to fish and wildlife along the river.

D. Biological Resources—Sensitive Species. Implementation of biological conservation measures described above would mitigate impacts to special status species.

E. Hydroelectric Power. Under the Law of the River and specific project legislation, power production has a priority subservient to Colorado River water delivery for authorized consumptive uses. Reclamation would continue to work closely with Western Area Power Authority to schedule water releases for satisfaction of water orders and to optimize power production at the various facilities. However, based on the fact that power production is a result of water releases to meet water orders, no mitigation for reduced opportunities to produce hydroelectric power is proposed.

F. Cultural Resources. At this time, Reclamation does not perceive a need to develop mitigation measures specific to historic properties for this action. On August 13, 2002, Reclamation transmitted a report to the Arizona, California and Nevada State Historic Preservation Officers (SHPOs) entitled "A Class I Overview and Effects Analysis for Execution of an Implementation Agreement, Development and Adoption of an Inadvertent Overrun and Payback Policy, and Associated Biological Conservation Measures on the lower Colorado River Between Lake Mead and Imperial Dam." In the transmittal letter to the SHPOs, Reclamation requested SHPO concurrence with the following:

1. Because effects of the IOP on reservoir and river elevations are projected to be well within the historic parameters for reservoir and river operations, the potential effects of the IOP on historic properties are indistinguishable from those that might be occurring as a result of ongoing river operations. Thus, consultation concerning development and adoption of an IOP would best be deferred to the broader consultation effort regarding its operation of the lower Colorado River that Reclamation previously committed to conduct with the Advisory Council on Historic Preservation and other interested parties under Section 110 of the National Historic Preservation Act (NHPA) in the ROD for ISG;

2. Section 106 consultation concerning the implementation of the biological conservation measures (associated with the change in diversion of up to 400 KAFY of Colorado River water) can be deferred until the specifics of the projects have been developed to the point where potential effects to historic properties can be better ascertained and assessed; and

3. There will be no adverse effect to historic properties located in Arizona and California as a result of the execution of a Water Delivery Agreement which provides for a change in the point of delivery from Imperial Dam, upstream to Park Dam, of up to 400 KAFY of Colorado River water.

In letters dated September 16, 2002, and November 2, 2002, respectively, both the Arizona and California SHPOs concurred with Reclamation's findings. Development and implementation of an IOP is the only one of the three proposed actions that could result in effects to historic properties in Nevada. In a letter dated September 6, 2002, the Nevada SHPO indicated it would concur with Reclamation's request to defer a determination of effect for the IOP to the broader NHPA Section 110 consultation on river operations.

G. Tribal Resources. Specific locations for the construction and maintenance of biological conservation measures along the Colorado River have not yet been determined. Conservation measures would not be located on tribal lands without the express consent of and desire by the tribe(s).

H. Air Quality. One or more of the following measures could be implemented as standard operating practices to minimize combustive particulate matter (PM_{10}/$PM_{2.5}$) and fugitive dust (PM_{10}) emissions from proposed construction activities associated with the implementation of biological conservation measures (this list does not preclude the use of other mitigation measures):

1. Use particulate traps on diesel-powered equipment.

2. Minimize the use of diesel-powered equipment where feasible.

3. Use alternative diesel fuels in construction equipment where feasible.

4. Properly tune and maintain all construction equipment.

5. Apply water to areas where vehicles and equipment are involved in ground-disturbing activities.

6. Pave dirt roads or keep them wet, or apply non-toxic soil stabilizers, such as salts or detergents.

7. Increase water applications or reduce ground-disturbing activities as wind speeds increase.

8. Minimize the amount of disturbed area and vehicle speeds on site.

9. Cover inactive soil stockpiles or treat them with soil binders, such as crusting agents or water them to keep moist.

10. Cover trucks that haul soils or fine aggregate materials.

11. Designate personnel to monitor dust control program activities to ensure that they are effective in minimizing fugitive dust emissions.

12. Clean dirt from construction vehicle tires and undercarriages when leaving the construction site and before entering local roadways.

13. Sweep streets near the construction area at the end of the day if visible soil material is present.

I. Biological Conservation Measures from the December 2002 BO. Reclamation and the California water agencies, through a Conservation Agreement, propose to implement the following species conservation measures as a result of Reclamation's voluntary Endangered Species Act Section 7(a)(1) consultation regarding listed species in the IID/Salton Sea areas. Following is a summary of the conservation measures. The full text of the conservation measures, Reasonable and Prudent Measures, and Terms and Conditions may be found in the December 2002 BO.

1. *Desert Pupfish Conservation Measure 1:* Connectivity Impacts. In cooperation with its conservation agreement partners, Reclamation will ensure that an appropriate level of connectivity is maintained between pupfish populations in individual drains (in CVWD's area at the north end of the Salton Sea and in IID's area at the south end of the Sea) connected to the Salton Sea either directly or indirectly and that drain habitat below the first check will be maintained in the event that conditions in the Salton Sea become unsuitable for pupfish.

2. *Desert Pupfish Conservation Measure 2:* Selenium Impacts. Reclamation and its conservation agreement partners will commit to fund a study program to determine the impacts of selenium on desert pupfish. The objective of the study program will be to identify specific selenium thresholds at which pupfish survival or reproduction is adversely affected. Within 2 years of completion of the study program, Reclamation and its conservation agreement partners will meet with the Service and CDFG to review the results of the study program and the monitoring data. If the available information reviewed in this process indicates that the pupfish inhabiting the Imperial Valley drains that discharge directly to the Salton Sea are at risk from selenium, Reclamation will work in cooperation with IID, the Service and CDFG to identify and implement the best means for managing IID's drain channels to minimize potential selenium impacts on pupfish.

3. *Desert Pupfish Conservation Measure 3:* Management and Monitoring. In cooperation with its conservation agreement partners, Reclamation will carry out routine monitoring of pupfish presence to confirm continued presence in the drains and to develop information useful in adjusting management actions for this species.

4. *Rail Conservation Measure 1:* Salinity Impacts. Thirty-one acres of high quality managed marsh will be created to offset potential salinity impacts. In cooperation with its conservation agreement partners, Reclamation will work with the Service and CDFG to determine the design and location of these marshes. Design considerations will include the needs of both the Yuma clapper rail and California black rail.

5. *Rail Conservation Measure 2:* Selenium Impacts. Forty-two acres of additional high quality managed marsh habitat will be created to offset the potential selenium impacts on rail egg hatchability. The total amount of 73 acres of habitat will be created within 10 years of completion of this consultation.

6. *Rail Conservation Measure 3:* Management and Monitoring. A long-term adaptive management and monitoring plan will be developed for the mitigation marsh and submitted to the Service and CDFG for review and approval prior to initiation of habitat creation activities. The management plan will consider the requirements of both the Yuma clapper rail and the California black rail.

7. *Southwestern Willow Flycatcher Conservation Measure 1:* Evaluate Habitat. All potential cottonwood-willow and tamarisk stands will be evaluated for Southwestern willow flycatcher breeding habitat suitability.

8. *Southwestern Willow Flycatcher Conservation Measure 2:* Suitable Habitat Monitoring. If suitable Southwestern willow flycatcher breeding habitat is identified during Conservation Measure 1, this habitat will be monitored to quantify changes in the amount and quality of habitat. If suitable breeding habitat is lost or the quality of the habitat declines as a result of IID's water conservation activities so that it is no longer considered suitable breeding habitat, this loss will be offset through the creation and/or acquisition and preservation of higher quality, native riparian replacement habitat at a 1:1 ratio.

9. *Southwestern Willow Flycatcher Conservation Measure 3:* Management and Monitoring of Habitat. A long-term adaptive management and monitoring plan will be developed for any replacement habitat whether created or acquired.

10. *Southwestern Willow Flycatcher Conservation Measure 4:* Take Minimization During Construction. If suitable breeding habitat for Southwestern willow flycatchers is identified in the seepage communities adjacent to the East Highline Canal or in locations to be impacted by lateral interceptor construction, removal of suitable habitat in association with these construction activities will be scheduled to occur outside the breeding season for the Southwestern willow flycatcher. Specifically, removal of habitat would not occur between April 15 and August 15.

11. *Brown Pelican Conservation Measure 1 B:* Roost Site Creation. Reclamation, in cooperation with its conservation agreement partners, will construct at least two roost sites for California brown pelicans along the Southern California Coast. The objective of this conservation measure is to provide at least two major roost sites that in combination support roosting by at least 1,200 pelicans. The roosts will be sized to accommodate up to 1,000 pelicans each. A major roost site is defined as supporting at least 100 pelicans during June through October based on maximum counts. The roost sites are to be installed and functioning by 2018 and demonstrated to support at least 100 pelicans each and to support at least 1,200 pelicans in combination. They will be maintained through 2048.

VIII. Comments Received on Final EIS

Three comment letters were received on the Final IA EIS. Comment letters from the Southern Nevada Water Authority and Colorado River Commission of Nevada requested a wording change in the final IOP to reflect that introduction of non-system water could be considered as a source of payback, but only after appropriate environmental review and approval by Reclamation. Reclamation has concluded that such a change is within the scope of the environmental analysis in the Final IA EIS, and has made this change in the final IOP language.[13]

The third letter of comment was from the EPA. The EPA stated that the Final IA EIS addressed many of its concerns, but that EPA remained concerned about potential cumulative impacts on drinking water quality and on Indian Trust Assets. EPA suggested an EIS on the HCP would be an appropriate forum to address their remaining concerns, and that Reclamation should commit to extending Cooperating Agency status to the Service in the EIS for the HCP. Reclamation agrees that the NEPA process for the HCP is the appropriate forum to consider EPA's remaining concerns. Reclamation expects that the Service will be the lead agency for such NEPA evaluation, and will consider whether a new EIS is appropriate depending on the magnitude of change in the proposed HCP from that considered in the IID Transfer EIR/EIS.

In addition, two comment letters were received on the IID Water Conservation and Transfer Project EIR/EIS. Although this ROD is not based on that EIR/EIS, the issues raised in the comment letters are related to the IA (now Water Delivery Agreement), and are summarized here. Mr. Les W. Ramirez provided a comment letter on behalf of the Torres Martinez Band of Desert Cahuilla Indians. The letter stated the IID water conservation and transfer project will have direct impacts on the Tribe's fish, wildlife, land, water, and cultural assets. The Tribe is concerned that IID has not committed to implement the Salton Sea Habitat Conservation Strategy identified in the Final IID Transfer EIR/EIS. The Tribe also expressed concerns about potential air quality impacts, water quality (perchlorate) impacts to drinking water, and requested delay of CVWD recharge projects in Martinez Canyon and Dike 4. As noted above, Reclamation has included a description of off-river impacts associated with IID's water conservation actions pursuant to the QSA water transfer, but Reclamation does not have any control over the methods used by IID to conserve water. Since the potential impacts to Torres-Martinez resources result from decisions made by IID, mitigation of impacts is appropriately dealt with by IID and, in the case of CVWD recharge projects, by CVWD.

The second comment letter was from EPA. It raised concerns about substitution of a "15–year" plan for the Salton Sea Habitat Conservation Strategy after the Final IID Transfer EIR/EIS was filed (see Section V above). Based on this concern, and because supplemental NEPA compliance has not been carried out on the differences between the two approaches, EPA reiterated its objections to potential impacts on surface and groundwater quality, air quality, and biological resources.[14] EPA stated that its substantive objections could be addressed by the Habitat Conservation Plan and the Salton Sea Restoration Project. Reclamation notes that the Final IA EIS included the Section 7 approach as an alternative to the Salton Sea Habitat Conservation Strategy, and described the resulting environmental impacts in the

[13] Other minor changes in the final IOP Policy language were made for purposes of clarity. In addition, clarifications have been included to more carefully link calculation and repayment of overruns to the annual approvals of water orders by Reclamation pursuant to 43 CFR Pt. 417. These changes and clarifications to the IOP Policy do not result in any new or additional environmental impacts beyond those described in the Final IA EIS.

[14] On October 9, 2003, as this ROD was being finalized, the United States Court of Appeals for the Ninth Circuit issued an opinion directing the EPA to classify the Imperial Valley as a serious non-attainment area because of PM–10 concentrations exceeding standards established pursuant to the Clean Air Act. *Sierra Club* v. *EPA*, No. 01–71902. While the implications of this ruling are unclear at this time, the Department of the Interior will monitor developments and undertake additional review under NEPA, as appropriate.

absence of the Salton Sea Habitat Conservation Strategy.

Lastly, in an October 2, 2003 letter to Secretary Norton, the Colorado River Indian Tribes (CRIT) expressed concerns regarding the QSA's possible effect on the senior decreed rights of the CRIT. Specifically, the tribes noted that the agreements would allow additional deliveries of water from Lake Havasu into the Colorado River Aqueduct. The CRIT was unsure of any impact but expressed a desire for further information. The tribe's Colorado River rights would not be affected by the changes in points of diversion contemplated under the QSA. The QSA creates no new rights to Colorado River water, but only facilitates the movement of water from one user to another within California. The CRIT's use of Colorado River water will not be compromised by the QSA transfers.

The CRIT also expressed concern about how changes in points of diversion might affect hydropower production at the Headgate Rock Dam, the tribe's diversion point for Colorado River water. As described in the Draft and Final IA EIS, the QSA water transfers will result in less flow of water through the dam and will cause an associated reduction in hydropower generation. However, hydropower generation under the Boulder Canyon Project Act of 1928 is a secondary function and is available only to the extent that releases of water are required for downstream water use. The Boulder Canyon Act and the Supreme Court Decree in *Arizona* v. *California* make it clear that no right to water is created by hydropower generation and, therefore, the change in points of diversion will not impact the CRIT's senior water right. As described in the Final IA EIS, the QSA water transfers are estimated to reduce the opportunity to produce power at Headgate Rock Dam by an average of about 5 percent. The variation in Colorado River flow is within the range that occurs as a normal course of river operation.

IX. Implementing the Decision

A. Inadvertent Overrun and Payback Policy

Reclamation is adopting a policy that will identify inadvertent overruns, will establish procedures that account for inadvertent overruns and will define subsequent payback requirements for users of Colorado River mainstream water in the Lower Division States. The Inadvertent Overrun and Payback Policy is effective beginning on January 1, 2004. The language of the policy has been modified from the language published in Appendix I of the Final IA EIS. The comments from Southern Nevada Water Authority and Colorado River Commission of Nevada were accommodated. Edits were made for grammar and consistency, and to eliminate duplication. None of the changes would result in environmental impacts different from those described in the Final IA EIS. The policy as finalized follows.

1. Background

In its June 3, 1963 opinion in the case of *Arizona* v. *California* (373 U.S. 546), the Supreme Court of the United States held that Congress has directed the Secretary of the Interior (Secretary) to administer a network of useful projects constructed by the Federal Government on the lower Colorado River, and has entrusted the Secretary with sufficient power to direct, manage, and coordinate their operation. The Court held that this power must be construed to permit the Secretary to allocate and distribute the waters of the mainstream of the Colorado River within the boundaries set down by the Boulder Canyon Project Act (45 Stat. 1057, 43 U.S.C. 617) (BCPA). The Secretary has entered into contracts for the delivery of Colorado River water with entities in Arizona, California, and Nevada in accordance with section 5 of the BCPA. The Secretary has the responsibility of operating Federal facilities on the Colorado River and delivering mainstream Colorado River water to users in Arizona, California, and Nevada that hold entitlements, including present perfected rights, to such water.

Article V of the Decree of the Supreme Court of the United States in *Arizona* v. *California* dated March 9, 1964 (376 U.S. 340) requires the Secretary to compile and maintain records of diversions of water from the mainstream, of return flow of such water to the mainstream as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation, and of consumptive use of such water. Reclamation reports this data each year in the Decree Accounting Record.[15]

Pursuant to the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs developed as a result of the Colorado River Basin Project Act of September 30, 1968, the Secretary annually consults with representatives of the governors of the Colorado River Basin States, general public and others and issues an Annual Operating Plan (AOP) for the coordinated operation of the Colorado River reservoirs. Reclamation also requires each Colorado River water user in the Lower Basin to schedule water deliveries in advance for the following calendar year (calendar year is the annual basis for decree accounting of consumptive use in the lower Colorado basin) and to later report its actual water diversions and returns to the mainstream.

Pursuant to 43 CFR part 417, prior to the beginning of each calendar year, Reclamation consults with entities holding BCPA section 5 contracts (Contractor) for the delivery of water. Under these consultations, Reclamation makes recommendations relating to water conservation measures and operating practices in the diversion, delivery, distribution, and use of Colorado River water. Reclamation also makes a determination of the Contractor's estimated water requirements for the ensuing calendar year to ensure that deliveries of Colorado River water to each Contractor will not exceed those reasonably required for beneficial use under the respective BCPA contract or other authorization for use of Colorado River water. Reclamation sends a letter approving the Contractor's water order for the ensuing year in the amount determined to be appropriate by Reclamation. Reclamation then monitors the actual water orders, receives reports of measured diversions and return flows from major Contractors and Federal establishments, estimates unmeasured diversions and return flows, calculates consumptive use from preliminary diversions and measured and unmeasured return flows, and reports these records on an individual and aggregate monthly basis. Later, when final records are available, Reclamation prepares and publishes the final Decree Accounting Record on a calendar year basis.

For various reasons, a user may inadvertently consumptively use Colorado River water in an amount that exceeds the amount available under its entitlements as provided in annual approved water orders (inadvertent overrun). Further, the final Decree Accounting Record may show that an entitlement holder inadvertently diverted water in excess of the quantity of the entitlement that may not have been evident from the preliminary records. Reclamation is therefore adopting an administrative policy that defines inadvertent overruns, establishes procedures that account for the inadvertent overruns and defines the subsequent requirements for payback to the Colorado River mainstream.

2. Inadvertent Overruns

Effective January 1, 2004, Reclamation adopts the following Inadvertent Overrun and Payback Policy for the Lower Colorado River Basin:

1. Inadvertent overruns are those which the Secretary deems to be beyond the control of the entitlement holder; for example, overruns due to the discrepancy between preliminary and final stream flow and diversion records.

2. An inadvertent overrun is Colorado River water diverted, pumped or received by an entitlement holder of the Lower Division States that is in excess of the water user's entitlement for that year. This IOP policy provides a structure to payback the amount of water diverted, pumped or received in excess of entitlement for that year. This IOP policy does not create any right or entitlement to this water, nor does it expand the underlying entitlement in any way. An entitlement holder has no right to order, divert, pump or receive an inadvertent overrun. If, however, water is diverted, pumped or received inadvertently in excess of annual approved orders, and sources of unused Colorado River water are not available to accommodate adjustment of water orders by Reclamation, the inadvertent overrun policy will govern the payback. This IOP Policy will not be applied in any manner to the deliveries made under the United States Mexico Water Treaty of 1944.

3. Payback will be required to commence in the calendar year that immediately follows the release date of a final Decree Accounting Record that reports uses that are in excess of an individual's entitlement.

4. Payback must be made only from measures that are above and beyond the normal reasonable and beneficial consumptive use of water (extraordinary conservation measures). Extraordinary conservation measures mean actions taken to conserve water that otherwise would not return to the mainstream of the Colorado

[15] These records are published as: Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in *Arizona* v. *California, et. al.*, dated March 9, 1964.

River and be available for beneficial consumptive use in the United States or to satisfy the Mexican treaty obligation. Any entitlement holder with a payback obligation must submit to Reclamation, along with its water order, a plan which will show how it will intentionally forbear use of Colorado River water by extraordinary conservation measures, including fallowing, sufficient to meet its payback obligation and which demonstrates that the measures being proposed are in addition to those being implemented to meet any existing transfer or conservation agreement, and are in addition to the measures found in its Reclamation approved conservation plan. Plans for payback could also include supplementing Colorado River system water supplies with non-system water supplies through exchange or forbearance or other acceptable arrangements, provided that non-system water is not physically introduced into the system without appropriate environmental review and approval by Reclamation. Water banked off-stream or groundwater from areas not hydrologically connected to the Colorado River or its tributaries are examples of such supplemental supplies. Water ordered but subsequently not diverted is not included in this policy in any manner.

5. Maximum cumulative inadvertent overrun accounts will be specified for individual entitlement holders as 10 percent of an entitlement holder's normal year consumptive use entitlement. (Normal year means a year for which the Secretary has determined that sufficient mainstream Colorado River water is available for release to satisfy 7.5 maf of annual consumptive use in the States of California, Arizona and Nevada.)

6. The number of years within which an overrun, calculated from consumptive uses reported in final Decree Accounting Records, must be paid back, and the minimum payback required for each year shall be as follows:

a. In a year in which the Secretary makes a flood control release or a space building release pursuant to the applicable Water Control Manual for Hoover Dam, Lake Mead, any accumulated amount in the overrun account will be forgiven.

b. If the Secretary has declared a 70R surplus in an AOP applicable to the calendar year of payback, any payback obligation for that calendar year will be deferred at the entitlement holder's option.

c. In a year when Lake Mead elevation is between the elevation for a 70R surplus determination and elevation 1,125 feet above mean sea level on January 1, the payback obligation incurred in that year must be paid back in full within 3 years of the reporting of the obligation, with a minimum payback each year being the greater of 20 percent of the individual entitlement holder's maximum allowable cumulative overrun account amount or 33.3 percent of the total account balance.

d. In a year when Lake Mead elevation is at or below elevation 1,125 feet above mean sea level on January 1, the total account balance must be paid back in full in that calendar year.

e. For any year in which the Secretary declares a shortage under the Decree, the total account must be paid back in full that calendar year, and further accumulation of inadvertent overruns will be suspended as long as shortage conditions prevail.

7. A separate inadvertent overrun account may be established in those limited cases in which a lower priority user is contractually responsible for payback of other senior entitlement holders. The separate inadvertent overrun account will be limited to a maximum cumulative amount of 10 percent of the senior entitlement holder's average consumptive use. Such inadvertent overrun accounts will be the assigned responsibility of the lower priority user in addition to its own entitlement-based inadvertent overrun account. If, however, senior entitlement holder's approved aggregate calendar year water orders are in excess of the specified amount for which the lower priority user will be responsible, such excess will not be deemed inadvertent and the lower priority user's water order for that year will be reduced accordingly by Reclamation.

8. Each month, Reclamation will monitor the actual water orders, receive reports of measured diversions and return flows from Contractors and Federal establishments, estimate unmeasured diversions and return flows, and project individual and aggregate consumptive uses for the year. Should preliminary determinations indicate that monthly consumptive uses by individual users, or aggregate uses, when added to the approved schedule of uses for the remainder of that year, exceed entitlements pursuant to annual approved water orders but are not exceeding the maximum inadvertent overrun account amount, Reclamation will notify in writing the appropriate entities that the preliminary determinations are forecasting annual uses in excess of their entitlements.

9. During years in which an entitlement holder is forbearing use to meet its payback obligation, Reclamation will monitor the implementation of the extraordinary conservation measures, and require that the entitlement holder's consumptive use be at or below its approved water order for that year. Should the entitlement holder's actual monthly deliveries for the first 5 months of the year exceed their forecasted orders, and projections indicate the entitlement holder's end of year use is likely to be 5 percent or more above their adjusted entitlement, Reclamation will notify the entitlement holder in writing. At the end of 7 months, if it continues to appear that the entitlement holder is likely to be above its adjusted entitlement, Reclamation will notify the entitlement holder that they are at risk of exceeding their adjusted entitlement, and having their next year's orders placed under enforcement proceedings. Reclamation will monitor the implementation of the extraordinary conservation measures and monitor the forbearance of consumptive use of Colorado River water. Should preliminary determinations of the implementation of extraordinary conservation or of monthly Colorado River consumptive uses indicate that sufficient extraordinary conservation or sufficient forbearance of Colorado River consumptive use is not projected to occur, Reclamation will notify the appropriate entitlement holders in writing that the preliminary determinations are forecasting that their annual payback obligations are not on target or being met. If this condition occurs for two consecutive years, in the second year Reclamation will begin enforcement proceedings, and will so advise the entitlement holder in writing by July 31 of the second year. Reclamation will consult with the entitlement holder on a modified release schedule and will limit releases to the entitlement holder for the remainder of the year such that by the end of the year the individual entitlement holder has met its payback obligation.

10. Procedures will be established for accounting for inadvertent overruns on an annual basis and for supplementing the final Decree Accounting Record. The procedures and measures for administering the IOP will be reviewed every 5 years. Final determinations under this IOP policy shall be made by Reclamation's Lower Colorado Regional Director.

B. Colorado River Water Delivery Agreement

Effective upon signature, under the authority of the Secretary, the Department proposes to execute the following Colorado River Water Delivery Agreement.

Colorado River Water Delivery Agreement

Federal Quantification Settlement Agreement—for purposes of Section 5(B) of Interim Surplus Guidelines.

The United States by and through the Secretary of the Interior (Secretary) hereby enters into this Colorado River Water Delivery Agreement (Agreement) with the Imperial Irrigation District (IID), the Coachella Valley Water District (CVWD), The Metropolitan Water District of Southern California (MWD) (these three districts are collectively referred to herein as the Districts), and the San Diego County Water Authority (SDCWA). The Secretary, IID, CVWD, MWD and SDCWA hereby agree as follows:

Recitals

A. By regulations dated September 28, 1931, the Secretary incorporated the schedule of priorities provided in the Seven Party Agreement dated August 18, 1931, and established priorities One through Seven for use of the waters of the Colorado River within the State of California. The regulations were promulgated pursuant to the Boulder Canyon Project Act (BCPA) and required that contracts be entered into for the delivery of water within those priorities.

B. The Secretary has entered into contracts with, among others, the Palo Verde Irrigation District (PVID), IID, CVWD, and MWD, for the delivery of Colorado River water pursuant to Section 5 of the BCPA (Section 5 Contracts). Under those Section 5 Contracts, PVID, IID, CVWD and MWD have certain rights to the delivery of Colorado River water, which for PVID and IID include the satisfaction of present perfected rights in accordance with Section 6 of the BCPA. MWD and CVWD also have surplus water delivery contracts with the Secretary.

C. IID, CVWD, MWD and SDCWA have entered into agreements relating to, among other matters, their respective beneficial consumptive use of Colorado River water and

desire that, for the term of this Agreement, Colorado River water be delivered by the Secretary in the manner contemplated in this Agreement.

D. The Secretary has the authority to enter into this Agreement on behalf of the United States pursuant to the BCPA, the 1964 Decree in *Arizona* v. *California*, and other applicable authorities.

Operative Terms

1. Water Delivery Contracts

a. Priorities 1, 2, 3(b), 6(b), and 7 of current Section 5 Contracts for the delivery of Colorado River water in the State of California and Indian and miscellaneous Present Perfected Rights (PPRs) within the State of California and other existing surplus water contracts are not affected by this Agreement.

b. The Secretary agrees to deliver Colorado River water in the manner set forth in this Agreement during the term of this Agreement. The Secretary shall cease delivering water pursuant to this Agreement at the end of the term of this Agreement; provided, however, that the Secretary's delivery commitment to the San Luis Rey Indian Water Rights Settlement Parties (SLR) shall not terminate at the end of the term but shall instead continue, pursuant to Section 106 of Pub. L. 100–675, 102 Stat. 4000 *et seq.*, as amended, subject to the terms and conditions of any applicable agreement to which the Secretary is a party concerning the allocation of water to be conserved from the lining of the All-American and Coachella Canals.

c. The Districts' respective Section 5 Contracts shall remain in full force and effect and, with this Agreement, shall govern the delivery of Colorado River water.

2. Quantification of Priority 3(a)

a. Except as otherwise determined under the Inadvertent Overrun and Payback Policy identified in Section 9 of this Agreement, the Secretary shall deliver Priority 3(a) Colorado River water to IID in an amount up to but not more than a consumptive use amount of 3.1 million acre-feet per year (AFY) less the amount of water equal to that to be delivered by the Secretary for the benefit of CVWD, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B hereto. Colorado River water acquired by IID after the date of this Agreement, and where necessary approved by the Secretary, shall not count against this cap.

b. Except as otherwise determined under the Inadvertent Overrun and Payback Policy, the Secretary shall deliver Priority 3(a) Colorado River water to CVWD in an amount up to but not more than a consumptive use amount of 330,000 AFY less the amount of water equal to that to be delivered by the Secretary for the benefit of IID, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B hereto. Colorado River water acquired by CVWD in any transaction to the extent agreed upon prior to or concurrent with the execution of this Agreement by IID and MWD and, where necessary approved by the Secretary, shall not count against this cap.

3. Quantification of Priority 6(a)

a. Subject to any rights that PVID may have, and except as otherwise provided under the Interim Surplus Guidelines, or under the agreements contemplated by those guidelines, the Secretary shall deliver Priority 6(a) water to MWD, IID and CVWD in the following order and consumptive use volumes: (i) 38,000 AFY to MWD; (ii) 63,000 AFY to IID; and (iii) 119,000 AFY to CVWD, or as those parties may agree to occasionally forbear.

b. Any water not used by MWD, IID or CVWD as set forth above will be available to satisfy the next listed amount in Section 3.a. above. Any additional water available for Priority 6(a) shall be delivered by the Secretary in accordance with IID and CVWD's entitlements under their respective Section 5 Contracts in effect as of the date of this Agreement.

4. Transfers and Other Water Delivery Commitments

a. The Secretary shall deliver IID's Priority 3(a) entitlement for the benefit of IID and others as specified in Exhibits A and B hereto and in the amounts and to the points of delivery set forth therein.

b. The Secretary shall deliver CVWD's Priority 3(a) entitlement for the benefit of the CVWD and others as specified in Exhibits A and B hereto and in the amounts and to the points of delivery set forth therein.

c. At SDCWA's election, the Secretary shall deliver water made available for SDCWA's benefit as set forth in Exhibits A and B hereto to the intake facilities for the Colorado River Aqueduct and SDCWA may then exchange up to 277,700 AFY of Colorado River water with MWD at Lake Havasu.

d. If in any given calendar year that the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3(b), exceeds the consumptive use amount of 420,000 AFY, the Secretary will reduce the amount of water otherwise available to MWD in Priorities 4, 5 or 6(a) by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3(b) is less than 420,000 AFY, the Secretary shall deliver to MWD the difference.

e. 1. The Secretary shall deliver to CVWD at Imperial Dam the consumptive use amount of 20,000 AFY or such lesser consumptive use amount as may be requested by CVWD of Priority 3(a) Colorado River water made available to MWD under the Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water between IID and MWD dated December 22, 1988, as amended.

2. Beginning in 2048 and in each year thereafter, the Secretary shall deliver to CVWD at Imperial Dam the consumptive use amount of 50,000 AFY or such lesser consumptive use amount as may be requested by CVWD from the Colorado River water available to MWD.

3. When requested by MWD for the purpose of satisfying an exchange obligation to CVWD under an agreement between CVWD and MWD for exchange of CVWD's State Water Project water, the Secretary shall deliver to CVWD at Imperial Dam the consumptive use amount of 135,000 AFY or such lesser amount as may be requested by MWD.

f. CVWD may decline to take a portion of the water to be conserved by IID for CVWD. In this event, the Secretary shall instead deliver such portion of the water to IID or MWD, or to other unspecified water users provided, further, that any such delivery to an unspecified user is, where necessary, subject to Secretarial approval.

g. Colorado River water will be made available to MWD through forbearance under the existing priority system as a result of a proposed land management program between PVID landowners and MWD. Neither IID nor CVWD will make any claim to or object to delivery to MWD of PVID program water to the extent agreed upon prior to or concurrent with the execution of this Agreement by IID and CVWD. If the transfer of PVID program water is not implemented, then IID has agreed to transfer for the benefit of MWD/SDCWA amounts necessary to meet the minimum Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines, not to exceed 145,000 AF in the aggregate.

h. CVWD may utilize Colorado River water outside of Improvement District No. 1 to the extent consented to and agreed upon prior to or concurrent with the execution of this Agreement by IID and MWD.

i. Notwithstanding the transfers set forth in this section and Exhibit B, IID, CVWD, MWD and SDCWA recognize and agree that at the conclusion of the effective period of the Interim Surplus Guidelines, they shall have implemented sufficient measures to be able to limit total uses of Colorado River water within California to 4.4 million AFY, unless the Secretary determines a surplus under a 70R strategy.

5. Shortages

a. The Secretary's authority under II.B.3 of the 1964 Decree in *Arizona* v. *California* is not limited in any way by this Agreement.

b. If for any reason there is less than 3.85 million AFY available under Priorities 1, 2 and 3 during the term of this Agreement, any water which is made available by the Secretary to IID and CVWD shall be delivered to IID, CVWD, MWD, and SDCWA in accordance with the shortage sharing provisions agreed upon prior to or concurrent with the execution of this Agreement by IID, CVWD, MWD and SDCWA.

6. Term

a. This Agreement will become effective upon execution of this Agreement by all Parties.

b. This Agreement will terminate on December 31, 2037, if the 1998 IID/SDCWA transfer program terminates in that year.

c. If this Agreement does not terminate on December 31, 2037, then this Agreement will terminate on December 31, 2047 unless extended by agreement of all parties until December 31, 2077, in which case this Agreement will terminate on December 31, 2077.

d. The Secretary's delivery commitment to the SLR and the Districts' recognition and

acceptance of that delivery commitment, shall not terminate but shall instead continue, pursuant to Section 106 of Public Law 100–675, 102 Stat. 4000 *et seq.*, as amended.

7. Interim Surplus Guidelines

The Secretary finds that execution of this Agreement constitutes "all required actions" that the relevant California Colorado River water contractors are required to undertake pursuant to Section 5(B) of the Interim Surplus Guidelines. Accordingly, upon execution of this Agreement by all parties, the interim surplus determinations under Sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines are reinstated.

8. Benchmarks for the State of California's Agricultural Use

a. The parties to this Agreement agree to carry out the transfers identified in Section 4 above and in Exhibit A hereto in accordance with the schedule set forth in Exhibit B hereto. Nothing in this Agreement authorizes or precludes carrying out the transfers on a timetable sooner than provided in the schedule set forth in Exhibit B hereto. The transfers in the schedule set forth in Exhibit B hereto are undertaken to allow California agricultural usage (by PVID, Yuma Project Reservation Division, IID, and CVWD) plus 14,500 af of PPR use to be at or below the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines. Nothing in this Agreement authorizes or precludes additional transfers of Colorado River water as agreed upon prior to or concurrent with the execution of this Agreement by the Districts to meet the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines. All determinations by the Secretary with respect to this section shall be based upon Decree Accounting. Repayment of overrun amounts shall not count toward compliance with the transfers in the schedule set forth in Exhibit B hereto or toward compliance with the Benchmark Quantities set forth in Section 5(C) of the Interim Surplus Guidelines.

b. In the event that (i) the transfers are carried out as set forth in the schedule in Exhibit B hereto or additional Colorado River transfers as agreed upon prior to or concurrent with the execution of this Agreement by the Districts are carried out and (ii) California's Agricultural usage plus 14,500 af of PPR use is at or below the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines, the provisions of this subparagraph shall apply.

1. Notwithstanding the provisions of the November 22, 2002 Supplement to the 2002 Annual Operating Plan, any existing overruns in calendar years 2001 and 2002 by parties to this Agreement must be repaid within an eight-year period beginning in calendar year 2004 in accordance with the schedule attached in Exhibit C hereto, except that in the event that any Annual Operating Plan 24-Month Study indicates that a shortage will occur within months 13 through 24, any remaining balance of the 2001 and 2002 overruns shall be fully repaid during the next calendar year. Repayment of any overruns other than from calendar years 2001 and 2002 shall be pursuant to the Inadvertent Overrun and Payback Policy identified in Section 9 below.

2. The Secretary has considered the quantification of Priority 3(a) as set forth in Section 2 of this Agreement and the water transfers set forth in the schedule in Exhibit B hereto. These water transfers were developed to assist the Districts and SDCWA to meet the provisions of Section 4(i) of this Agreement and to reduce the occurrence of future reasonable and beneficial use reviews under 43 CFR Pt. 417 to unique circumstances. These water transfers are based upon water conservation activities to be implemented over the term of this Agreement. For these reasons, the Secretary does not anticipate any further review of the reasonable and beneficial use of Colorado River water by IID pursuant to the annual 43 CFR Pt. 417 reviews that are conducted during the initial term of this Agreement as set forth in Section 6.b. (December 31, 2037). Should the Secretary engage in any further review of the reasonable and beneficial use of Colorado River water by IID pursuant to 43 CFR Pt. 417 under this Section, the Secretary will base her decision on (i) the purpose of the quantification of Priority 3(a) and the reductions and transfers set forth on Exhibit B hereto, and (ii) the implementation of the water transfers by IID as set forth in the schedule in Exhibit B, in addition to the consideration of the factors in 43 CFR 417.3

c. Notwithstanding any other provision of this Agreement, and in addition to any applicable provisions of the Interim Surplus Guidelines, in the event that either (i) the transfers are not carried out as set forth in Exhibit B hereto or additional Colorado River transfers as agreed upon prior to or concurrent with the execution of this Agreement by the Districts are not carried out, or (ii) California's Agricultural usage plus 14,500 af of PPR use is above the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines, the provisions of this subparagraph shall apply.

1. For each District that has not implemented the water transfers to which it is a party upon the agreed upon schedule as set forth in Exhibit B hereto, the Inadvertent Overrun and Payback Policy identified in Section 9 below will be immediately suspended. During suspension of the Inadvertent Overrun and Payback Policy, for previously incurred overruns, the payback period shall be as provided in the existing Inadvertent Overrun and Payback Policy were such Policy not suspended. The Inadvertent Overrun and Payback Policy will be reinstated at such time as a District has implemented the water transfers to which it is a party upon the agreed upon schedule as set forth in Exhibit B hereto.

2. Any remaining existing overruns from calendar years 2001 and 2002 by parties to this Agreement must be repaid within a three-year period.

3. In addition to any applicable provisions of the Interim Surplus Guidelines, in the event that the transfers are not implemented in accordance with Column 23 in Exhibit B hereto, MWD shall not place any order to the Secretary for any Colorado River water otherwise available pursuant to sections 2(B)(1) and 2(B)(2) as set forth in the Interim Surplus Guidelines.

4. The Secretary anticipates that a further review of the reasonable and beneficial use of Colorado River water by the Districts will be required pursuant to the annual 43 CFR Pt. 417 reviews that are conducted during the initial term of this Agreement as set forth in Section 6.b. (December 31, 2037). In any such review, the Secretary will base her decision on the factors set forth in Section 8.b.2 above as well as the basis for any District's non-implementation of the transfers set forth in Exhibit B hereto, in addition to the consideration of the factors in 43 CFR 417.3.

9. Inadvertent Overrun and Payback Policy

For so long as the provisions of Section 8.b of this Agreement are applied, the Secretary will not materially modify the Inadvertent Overrun and Payback Policy for a 30-year period, absent extraordinary circumstances such as significant Colorado River infrastructure failures, and subject to the provisions of Section 5 of this Agreement. In the event that extraordinary circumstances arise, the Secretary will consult with the Districts and other interested parties before initiating any material change.

10. Additional Provisions

a. *Imperial Irrigation District* v. *United States of America, et al.*, CV 0069W (JFS) (D. Cal. filed January 10, 2003) (JFS), is dismissed pursuant to Stipulation under Fed. R. Civ. P. 41(a)(1). Nothing in this Agreement shall affect the preclusive and non-preclusive effects of the Stipulation during the term of this Agreement and thereafter.

b. Upon dismissal of *Imperial Irrigation District* v. *United States, et al.*, as provided in subsection 10(a) above, the Secretary will irrevocably terminate the *de novo* "Recommendations and Determinations Authorized by 43 CFR Pt. 417, Imperial Irrigation District" for 2003, and IID's water order for 2003 is approved subject to the terms of this Agreement.

c. 1. IID, CVWD, MWD, and SDCWA do not agree on the nature or scope of rights to the delivery, use or transfer of Colorado River water within the State of California. Furthermore, the Districts and SDCWA agree not to use this Agreement or any provision hereof, as precedence for purposes of evidence, negotiation or agreement on any issue of California or federal law in any administrative, judicial or legislative proceeding, including without limitation, any attempt by IID and SDCWA to obtain further approval of any water transaction.

2. The terms of this Agreement do not control or apply to the nature or scope of rights to the delivery, use or transfer of Colorado River water within the State of California, except as those rights are defined and addressed in this Agreement during the term hereof.

3. By executing this Agreement, the Districts and SDCWA are not estopped from asserting in any administrative, judicial or legislative proceeding, including those involving the United States, that neither this Agreement nor any of its terms was necessary or required to effectuate the transactions contemplated herein.

4. Nothing herein waives the ability of any party to challenge the exercise of particular miscellaneous and Indian PPRs.

d. This Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97–293, 93 Stat. 1263).

e. This Agreement does not (i) Guarantee or assure any water user a firm supply for any specified period, (ii) change or expand existing authorities under applicable federal law, except as specifically provided herein with respect to the Districts, (iii) address interstate distribution of water; (iv) change the apportionments made for use within individual States, (v) affect any right under the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.), or any other provision of applicable federal law.

f. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to enforce the terms of this Agreement in any person or entity that is not a party.

g. Each party to this Agreement represents that the person executing this Agreement on behalf of such party has full power and authority to do so, and that his/her signature is legally sufficient to bind the party on whose behalf he/she is signing.

h. This Agreement shall remain in full force and effect according to its terms regardless of whether the Interim Surplus Guidelines are in effect or terminated.

i. This Agreement with the United States is subject to and controlled by the Colorado River Compact of 1922.

Signatures by: United States Secretary of the Interior, Coachella Valley Water District, Imperial Irrigation District, The Metropolitan Water District of Southern California, and San Diego County Water Authority.

Exhibit A: Delivery of Priority 3(a) consumptive use entitlement to the Imperial Irrigation District and the Coachella Valley Water District

Imperial Irrigation District

The Secretary of the Interior shall deliver Imperial Irrigation District's Priority 3(a) consumptive use entitlement under this Colorado River Water Delivery Agreement, pursuant to this Exhibit A and Exhibit B hereto as follows:

Delivered to (entity)	At (point of diversion)	Amount not to exceed (AF)	Notes
CVWD	Imperial Dam	103,000.	
MWD	Lake Havasu	110,000	1
SDCWA	Lake Havasu	56,200	2
SDCWA	Lake Havasu	200,000	3
SLR	see note 4	see note 4	4
Misc. & Indian PPRs	Current points of delivery	11,500	5
For benefit of MWD/SDCWA	Lake Havasu	145,000	6
IID	Imperial Dam	Remainder	
IID's Priority 3(a) Total		3,100,000	

Notes to Exhibit A, Imperial Irrigation District:

1. Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water, dated December 22, 1988; Approval Agreement, dated December 19, 1989. Of amount identified: up to 90,000 af to MWD and 20,000 af to CVWD.
2. Water conserved from the construction of a new lined canal parallel to the All-American Canal from Pilot Knob to Drop 3.
3. Agreement for Transfer of Conserved Water, dated April 29, 1998, as amended. As set forth in Exhibit B, delivery amounts shall be 205,000 AF in calendar year 2021 and 202,500 AF in calendar year 2022.
4. Water conserved from All-American Canal lining project and made available for benefit of San Luis Rey Settlement Parties under applicable provisions of Pub. L. 100–675, as amended. Quantity may vary, not to exceed 16,000 afy, as may the point of diversion, subject to the terms of the Allocation Agreement.
5. Water to be delivered to miscellaneous and Indian PPRs identified in the Decree in *Arizona* v. *California*, as supplemented. The delivery of water will be to current points of delivery unless modified in accordance with applicable law.
6. As provided in subsection 4(g) of this Agreement.

Coachella Valley Water District

The Secretary of the Interior shall deliver Coachella Valley Water District's Priority 3(a) consumptive use entitlement under this Colorado River Water Delivery Agreement pursuant to this Exhibit A and Exhibit B hereto as follows:

Delivery to (entity)	At (point of diversion)	Amount not to exceed (AF)	Notes
SLR	see note 1	see note 1	1
SDCWA	Lake Havasu	21,500	2
Misc. & Indian PPR	Current points of delivery	3,000	3
CVWD	Imperial Dam	Remainder	
Coachella Valley Water District's Priority 3(a) Total		330,000	

Notes to Exhibit A, Coachella Valley Water District:

1. Water conserved from Coachella Canal lining project and made available for benefit of San Luis Rey Settlement Parties under applicable provisions of Pub. L. No. 100–675, as amended. Quantity may vary, not to exceed 16,000 afy, as may the point of diversion, subject to the terms of the Allocation Agreement.
2. Water conserved from lining the unlined portion of the Coachella Canal.
3. Water to be delivered to miscellaneous and Indian PPRs identified in the Decree in *Arizona* v. *California*, as supplemented. The delivery of water will be to current points of delivery unless modified in accordance with applicable law.

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EXHIBIT B - Part 1

QUANTIFICATION AND TRANSFERS[1]

In Thousands of Acre-feet

Col:	1	2	3	4	5	6	7	8	9	10	11	12	13
				IID Priority 3a Reductions									
	Calendar Year	[2]Priority 1, 2 and 3b	IID Priority 3a Quantified Amount	[3] *IID Reduction: MWD 1988 Agreement Transfer*	IID Reduction: SDCWA Transfer	[4] *IID Reduction: AAC Lining IID, SDCWA & SLR*	[5,6]IID Reduction: SDCWA Mitigation Transfer	[7]Intra-Priority 3 Transfer IID/CVWD	[6] *IID Reduction: MWD Transfer with Salton Sea Restoration*	[8] *IID Reduction: Conditional ISG Backfill*	[9]IID Reduction. Misc. PPRs	IID Reductions: Total Amount *(sum of columns 4 through 11)*	[10]IID Net Consumptive Use Amount *(difference between column 3 and column 12)*
1	2003	420	3,100	*110*	10	*0*	5	0	*0*	*0*	11.5	136.5	2,963.5
2	2004	420	3,100	*110*	20	*0*	10	0	*0*	*0*	11.5	151.5	2,948.5
3	2005	420	3,100	*110*	30	*0*	15	0	*0*	*0*	11.5	166.5	2,933.5
4	2006	420	3,100	*110*	40	*0*	20	0	*0*	*9*	11.5	190.5	2,909.5
5	2007	420	3,100	*110*	50	*0*	25	0	*0*	*0*	11.5	196.5	2,903.5
6	2008	420	3,100	*110*	50	*67.7*	25	4	*20*	*0*	11.5	288.2	2,811.8
7	2009	420	3,100	*110*	60	*67.7*	30	8	*40*	*0*	11.5	327.2	2,772.8
8	2010	420	3,100	*110*	70	*67.7*	35	12	*60*	*0*	11.5	366.2	2,733.8
9	2011	420	3,100	*110*	80	*67.7*	40	16	*80*	*0*	11.5	405.2	2,694.8
10	2012	420	3,100	*110*	90	*67.7*	45	21	*100*	*0*	11.5	445.2	2,654.8
11	2013	420	3,100	*110*	100	*67.7*	70	26	*100*	*0*	11.5	485.2	2,614.8
12	2014	420	3,100	*110*	100	*67.7*	90	31	*100*	*0*	11.5	510.2	2,589.8
13	2015	420	3,100	*110*	100	*67.7*	110	36	*100*	*0*	11.5	535.2	2,564.8
14	2016	420	3,100	*110*	100	*67.7*	130	41	*100*	*0*	11.5	560.2	2,539.8
15	2017	420	3,100	*110*	100	*67.7*	150	45	*91*	*0*	11.5	575.2	2,524.8
16	2018	420	3,100	*110*	130	*67.7*	0	63	*0*	*0*	11.5	382.2	2,717.8
17	2019	420	3,100	*110*	160	*67.7*	0	68	*0*	*0*	11.5	417.2	2,682.8
18	2020	420	3,100	*110*	193	*67.7*	0	73	*0*	*0*	11.5	454.7	2,645.3
19	2021	420	3,100	*110*	205	*67.7*	0	78	*0*	*0*	11.5	472.2	2,627.8
20	2022	420	3,100	*110*	203	*67.7*	0	83	*0*	*0*	11.5	474.7	2,625.3
21	2023	420	3,100	*110*	200	*67.7*	0	88	*0*	*0*	11.5	477.2	2,622.8
22	2024	420	3,100	*110*	200	*67.7*	0	93	*0*	*0*	11.5	482.2	2,617.8
23	2025	420	3,100	*110*	200	*67.7*	0	98	*0*	*0*	11.5	487.2	2,612.8
24	2026	420	3,100	*110*	200	*67.7*	0	103	*0*	*0*	11.5	492.2	2,607.8
25	2027	420	3,100	*110*	200	*67.7*	0	103	*0*	*0*	11.5	492.2	2,607.8
26	2028	420	3,100	*110*	200	*67.7*	0	103	*0*	*0*	11.5	492.2	2,607.8
	2029-2037	420	3,100	*110*	200	*67.7*	0	103	*0*	*0*	11.5	492.2	2,607.8
	2038-2047[13]	420	3,100	*110*	200	*67.7*	0	103	*0*	*0*	11.5	492.2	2,607.8
	2048-2077[14]	420	3,100	*110*	200	*67.7*	0	100	*0*	*0*	11.5	489.2	2,610.8

EXHIBIT B - Part 2

QUANTIFICATION AND TRANSFERS[1]

In Thousands of Acre-feet

14	15	16	17	18	19	20	21	22	23	<-Column	
CVWD Priority 3a											
	Reductions			**Additions**							
CVWD Priority 3a Quantified Amount	[4] *CVWD Reduction: CC Lining, SDCWA & SLR*	[9]CVWD Reduction: Misc. PPRs	[11]CVWD Reductions: Total Amount *(sum of columns 15 + 16)*	[7]Intra-Priority 3 Transfer IID/CVWD	[3] *Intra-Priority 3 Transfer MWD/CVWD*	CVWD Net Consumptive Use Amount *(columns 14 - 17 plus columns 18 + 19)*	Total Priority 1-3 Use Plus PPR Consumptive Use *(sum of columns 2+13+20 plus 11+16)*	[12]ISG Benchmarks	[12]Annual Targets	Calendar Year	
330	*0*	3	3	0	*20*	347	3,745.0	3,740	3,740	2003	1
330	*0*	3	3	0	*20*	347	3,730.0		3,707	2004	2
330	*0*	3	3	0	*20*	347	3,715.0		3,674	2005	3
330	*26*	3	29	0	*20*	321	3,665.0	3,640	3,640	2006	4
330	*26*	3	29	0	*20*	321	3,659.0		3,603	2007	5
330	*26*	3	29	4	*20*	325	3,571.3		3,566	2008	6
330	*26*	3	29	8	*20*	329	3,536.3	3,530	3,530	2009	7
330	*26*	3	29	12	*20*	333	3,501.3		3,510	2010	8
330	*26*	3	29	16	*20*	337	3,466.3		3,490	2011	9
330	*26*	3	29	21	*20*	342	3,431.3	3,470	3,470	2012	10
330	*26*	3	29	26	*20*	347	3,396.3		3,462	2013	11
330	*26*	3	29	31	*20*	352	3,376.3		3,455	2014	12
330	*26*	3	29	36	*20*	357	3,356.3		3,448	2015	13
330	*26*	3	29	41	*20*	362	3,336.3		3,440	2016	14
330	*26*	3	29	45	*20*	366	3,325.3			2017	15
330	*26*	3	29	63	*20*	384	3,536.3			2018	16
330	*26*	3	29	68	*20*	389	3,506.3			2019	17
330	*26*	3	29	73	*20*	394	3,473.8			2020	18
330	*26*	3	29	78	*20*	399	3,461.3			2021	19
330	*26*	3	29	83	*20*	404	3,463.8			2022	20
330	*26*	3	29	88	*20*	409	3,466.3			2023	21
330	*26*	3	29	93	*20*	414	3,466.3			2024	22
330	*26*	3	29	98	*20*	419	3,466.3			2025	23
330	*26*	3	29	103	*20*	424	3,466.3			2026	24
330	*26*	3	29	103	*20*	424	3,466.3			2027	25
330	*26*	3	29	103	*20*	424	3,466.3			2028	26
330	*26*	3	29	103	*20*	424	3,466.3			2029-2037	
330	*26*	3	29	103	*20*	424	3,466.3			2038-2047[13]	
330	*26*	3	29	100	*20*	421	3,466.3			2048-2077[14]	

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Notes to Exhibit B:

1. Exhibit B is independent of increases and reductions as allowed under the Inadvertent Overrun and Payback Policy.

2. Any higher use covered by MWD, any lesser use will produce water for MWD and help satisfy ISG Benchmarks and Annual Targets.

3. IID/MWD 1988 Conservation Program conserves up to 110,000 AFY and the amount is based upon periodic verification. Of amount conserved, up to 20,000 AFY to CVWD (column 19), which does not count toward ISG Benchmarks and Annual Targets, and remainder to MWD.

4. Ramp-up amounts may vary based upon construction progress, and final amounts will be determined by the Secretary pursuant to the Allocation Agreement.

5. Any amount identified in Exhibit B for mitigation purposes will only be from non-Colorado River sources and these amounts may be provided by exchange for Colorado River water.

6. Water would be transferred to MWD subject to satisfaction of certain conditions and to appropriate federal approvals. For informational purposes only, these transfers may also be subject to state approvals. Schedules are subject to adjustments with mutual consent. After 2006, these quantities will count toward the ISG Benchmarks (column 22) and Annual Targets (column 23) only if and to the extent that water is transferred into the Colorado River Aqueduct for use by MWD and/or SDCWA.

7. MWD can acquire if CVWD declines the water. Any water obtained by MWD will be counted as additional agricultural reduction to help satisfy the ISG Benchmarks and Annual Targets. MWD will provide CVWD 50,000 AFY of the 100,000 AFY starting in year 46.

8. IID has agreed to provide transfer amounts to meet the minimum ISG benchmarks, not to exceed a cumulative total of 145,000 AF. Maximum transfer amounts are 25,000 AF in 2006, 50,000 AF plus the unused amount from 2006 in 2009, and 70,000 AF plus the unused amounts from 2006 and 2009 in 2012. In addition to the maximum transfer amounts IID has also committed that no more than 72,500 AF of reduced inflow to the Salton Sea would result from these additional transfers.

9. Up to the amount shown, as agreed upon reduction to IID or CVWD to cover collectively the sum of individual Miscellaneous PPRs, federal reserved rights and decreed rights. This is a reduction that counts towards ISG Benchmarks and Annual Targets.

10. For purposes of Subparagraph 8(b)(2)(i) and (ii) and 8(c)(1) and (4) the Secretary will take into account: (i) the satisfaction of necessary conditions to certain transfers (columns 7 and 9) not within IID's control; (ii) the amounts of conserved water as determined, where such amounts may vary (columns 4, 6, 9 and 10); and (iii) with respect to column 7, reductions by IID will be considered in determining IID's compliance regardless of whether the conserved water is diverted into the Colorado River Aqueduct.

11. For purposes of Subparagraph 8(c)(1) and (4) the Secretary will take into account: (i) The satisfaction of necessary conditions to certain transfers (columns 15 and 16) not within CVWD's control; and (ii) the amounts of conserved water as determined, where such amounts may vary (column 15).

12. All consumptive use of priorities 1 through 3 plus 14,500 AF of PPRs must be within 25,000 AF of the amount stated.

13. Assumes SDCWA does not elect termination in year 35.

14. Assumes SDCWA and IID mutually consent to renewal term of 30 years.

Notes: Substitute transfers can be made provided the total volume of water to be transferred remains equal or greater than amounts shown consistent with applicable federal approvals.

The italicized columns (4, 6, 9, 10, 15 and 19) represent amounts of water that may vary.

EXHIBIT C.—PAYBACK SCHEDULE OF OVERRUNS FOR CALENDAR YEARS 2001 AND 2002

Year	IID	CVWD	MWD	Total
2004	18,900	9,100	11,000	39,000
2005	18,900	9,100	11,000	39,000
2006	18,900	9,100	11,100	39,100
2007	18,900	9,100	11,100	39,100
2008	18,900	9,200	11,100	39,200
2009	18,900	9,200	11,100	39,200
2010	19,000	9,200	11,100	39,300
2011	19,000	9,200	11,100	39,300
Cumulative	151,400	73,200	88,600	313,200

Note to Exhibit C: Each district may, at its own discretion, elect to accelerate paybacks to retire its payback obligation before the end of the eight-year period ending in calendar year 2011. Each district's payback obligation is subject to acceleration in anticipation of a shortage in the Lower Colorado River Basin as provided for in section 8(b).

[FR Doc. 04–5401 Filed 3–12–04; 8:45 am]

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Federal Register

Monday,
March 15, 2004

Part III

Department of Labor

Employment Standards Administration

20 CFR Parts 701 and 703

Regulations Implementing the Longshore and Harbor Workers' Compensation Act and Related Statutes; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701 and 703

RIN 1215–AB38

Regulations Implementing the Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (DOL) proposes to revise the regulations governing certain aspects of the administration of the Longshore and Harbor Workers' Compensation Act and its extensions: The Defense Base Act; the Outer Continental Shelf Lands Act; the Nonappropriated Fund Instrumentalities Act; and the District of Columbia Workmen's Compensation Act. The Office of Workers' Compensation Programs (OWCP), an agency within the Employment Standards Administration, administers the LHWCA and its extensions.

The proposed rule updates the existing regulations to reflect amendments to the LHWCA and organizational changes that have taken place within both the Employment Standards Administration and OWCP over the last several years. The proposed rule also requires, as a condition of being authorized to write LHWCA insurance, that a carrier establish to OWCP that its potential LHWCA obligations are sufficiently secured. A carrier's LHWCA obligations would be considered sufficiently secured if funds will be available to cover all of its workers' compensation claims in the event of the carrier's default or insolvency. As an alternative, a carrier could fully secure its obligations by posting a security deposit with the Secretary of Labor. Carriers would not, however, be required to make this showing for States with guaranty funds that fully and immediately cover LHWCA claims in the event of a carrier's default or insolvency. In addition, the proposed rule conforms, where appropriate, the rules governing OWCP's authorization of employers as self-insurers to the provisions governing carrier security deposits.

DATES: The Department invites written comments on the proposed rule and the new information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) from interested parties. Written comments must be received by May 14, 2004.

ADDRESSES: You may submit written comments, identified by RIN number 1215–AB38, on the proposed rules by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *OWCP–LS–REG–1215–AB38@dol.gov.* Include RIN number 1215–AB38 in the subject line of the message. Your comment must be in the body of the e-mail message; do not send attached files.
- Fax: (202) 693–1380 (this is not a toll-free number). Only comments of ten or fewer pages (including a fax cover sheet and attachments, if any) will be accepted by fax.
- Mail: Submit comments (preferably with three copies) to Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room C–4315, 200 Constitution Avenue, NW., Washington, DC 20210. Because of security-related concerns, there may be a significant delay in the receipt of submissions by U.S. mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) 1215–AB38 for this rulemaking.

Comments on the proposed regulations will be available for public inspection during normal business hours at the above address.

You may submit written comments on the new information collection requirements by sending them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room C–4315, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–0038 (this is not a toll-free number). TTY/TDD callers may dial toll free (877) 889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

Employers subject to the Longshore and Harbor Workers' Compensation Act, as amended (LHWCA), 33 U.S.C. 901 *et seq.*, are required by section 32 of the LHWCA to secure the payment of compensation under the Act by either purchasing insurance from an insurance carrier authorized by the Secretary of Labor to write LHWCA insurance, or by becoming authorized self-insured employers. The Division of Longshore and Harbor Workers' Compensation (DLHWC) within OWCP authorizes insurance carriers to write LHWCA coverage and employers to self-insure. It also requires that some authorized insurance carriers and all self-insured employers post security deposits in an amount sufficient to secure their future claim liabilities. Authorization to write insurance or to self-insure may be suspended or revoked for good cause shown.

Prior to June 29, 1990, DLHWC did not require authorized insurance carriers to post security deposits to guard against possible default or insolvency. Since LHWCA obligations of insolvent authorized insurance carriers accrue to, and are payable out of, the special fund in the United States Treasury established pursuant to section 44 of the LHWCA, the insolvency of a single carrier with a large amount of unsecured LHWCA obligations can result in a substantial drain on the resources of the fund. When this occurs, DLHWC, as guardian of the fund, must replenish the resources of the fund by increasing the annual assessments it collects from all authorized carriers and self-insured employers pursuant to 20 CFR 702.146(c).

Following a number of insurance carrier insolvencies in the 1980's, and to avoid further increases in annual assessments, DLHWC changed its policy regarding authorized insurance carriers and announced the change in a June 29, 1990, "Industry Notice." From that date, DLHWC began requiring authorized insurance carriers to post security deposits in an amount sufficient to secure the payment of their LHWCA obligations in States without guaranty or analogous funds and in States whose funds did not fully secure such obligations. This requirement was waived for insurance carriers with financial security ratings of "A" or higher issued by the A.M. Best Company. DLHWC determined the required security deposit amount after considering a number of factors, including the insurance carrier's scale of projected coverage, its financial history, its A.M. Best rating and its loss history.

Since that time, changing conditions have led DLHWC to reconsider the manner and extent to which authorized insurance carriers must secure their

LHWCA obligations. These conditions include: (1) Changes in the A.M. Best Company rating system; (2) the number of insurance carriers that have become insolvent over the past three years; (3) the significant increase in the number of insurance carriers that have been issued financial security ratings of "A–" or lower for the first time (which triggers the requirement to post security deposits under DLHWC's current policy) due to adverse conditions in the insurance industry and the general economic downturn; and (4) the industry-wide impact of September 11, 2001, losses. In addition to developing several possible solutions to this evolving problem internally, DLHWC also solicited suggestions and advice from the insurance industry in a request for information that was published in the **Federal Register** on February 22, 2002 (67 FR 8450).

DLHWC received 15 responses to this solicitation: eight from authorized self-insured employers or groups of authorized self-insured employers, five from authorized insurance carriers, and two from other groups. None of the responses set forth any legal or policy objections to requiring deposits from insurance carriers to fully secure their LHWCA obligations. On the contrary, many of the responses from all sources, including authorized insurance carriers, recommended requiring all authorized carriers to fully secure (through the posting of securities) their LHWCA obligations. The reasons offered for this position included the recognition that it was in the financial self-interest of carriers to insist on fully securing all LHWCA obligations since this would obviate the need for DLHWC to collect annual assessments from healthy carriers to pay for the insolvency of weaker carriers. Other reasons were the inherent inability of any static rating scheme to accurately predict the future financial stability of an insurance carrier, and the potential for catastrophic losses due to terrorism in the shipping and shipbuilding industries.

DLHWC recognizes that requiring all carriers to fully secure their LHWCA obligations would place the risk of an insolvency on the failed insurer rather than the surviving, healthy members of the insurance industry (and self-insured employers) and also would ensure that disabled workers will suffer no delay in obtaining their compensation following an insolvency. But DLHWC believes that this approach might force those insurance carriers who could not absorb the additional costs of posting securities to leave the market and therefore create instability that could lead to further problems. DLHWC also believes that this approach would duplicate, at least to some extent, the reserve requirements imposed by State insurance regulators.

DLHWC has considered two other approaches not suggested in the responses to the request for information. The first approach would use the existing special fund as an overall guaranty fund for all LHWCA claims under the authority of 33 U.S.C. 918(b). Under this approach, the special fund would make the compensation payments insured by an insolvent carrier and recover these costs in current and subsequent years by means of increased annual assessments and supplemental assessments on the remaining authorized insurance carriers and self-insured employers, and through its subrogated rights against the insolvent carrier itself. Because DLHWC would not require any security deposits from authorized carriers, it would be relatively easy to administer. But this approach would likely create negative incentives for prudent fiscal responsibility in the insurance industry.

The second alternative DLHWC considered, and the one adopted in the proposed regulations, is to continue requiring authorized insurance carriers to post security deposits, but only where there is no adequate State guaranty fund and only in amounts that reflect the actual risk of loss to the special fund. The proposed rule represents a measured approach: It will end DLHWC's undue reliance on A.M. Best ratings yet limit the number of carriers that must post deposits to those carriers operating in States with inadequate guaranty funds. DLHWC believes that this approach is the best way for it to address this situation and still fulfill its fiduciary responsibility as the special fund's guardian.

II. Summary of the Proposed Rule

The proposed regulations, which are more fully described below, establish the processes by which OWCP will determine the extent of an insurance carrier's LHWCA obligations, the amount of the deposit necessary to secure those obligations in light of the guaranty or analogous funds in the State or States in which the carrier writes LHWCA insurance; the manner in which such deposits will be held, and the circumstances under which they could be seized or otherwise used to avoid draining the available resources of the special fund. The proposed regulations also include those applicable to self-insured employers; the proposed revisions update the regulations and align them with the new carrier security deposit regulations. The proposed regulations will appear in 20 CFR parts 701 and 703.

A. 20 CFR Part 701

The proposed regulations in this part have been updated to reflect amendments to the LHWCA and organizational changes that have taken place within both OWCP and the Employment Standards Administration over the last several years. Other than these minor changes, the proposed rule is substantially the same as current part 701, with the exception of the sections describing the establishment of OWCP, the functions assigned to OWCP by the Assistant Secretary of Labor for Employment Standards, and OWCP's historical background at §§ 701.201 through 701.203. In the proposed rule, § 701.202 and § 701.203 are reserved, and § 701.201 refers the reader to the description of these same matters that is set out in subchapter A of chapter I of title 20 (20 CFR part 1).

B. 20 CFR Part 703

General Provisions

Except for the introductory statements in § 703.1 and the list of forms set out in § 703.2, those two proposed regulations and § 703.3 are generally unchanged from their current version.

Insurance Carrier Security Deposit Requirements

20 CFR 703.201

This section contains general introductory material, including the purpose of carrier security deposits.

20 CFR 703.202

In determining the required security deposit amount, DLHWC will consider the extent to which State insurance guaranty funds secure the carrier's LHWCA obligations in the event of default or insolvency. Section 703.202 sets forth a non-exclusive list of factors DLHWC may use to evaluate the coverage afforded by each State guaranty fund, if any. In the event a State guaranty fund's coverage cannot be determined, the regulation adopts a default rule providing that 33⅓ percent of a carrier's LHWCA obligations in that State will be deemed unsecured. This section also notes that DLHWC will make its determinations regarding each State's coverage available to the regulated community and the public by posting them on its Web site.

20 CFR 703.203

An insurance carrier will be required to apply annually for a determination of the extent of its unsecured LHWCA obligations, and the amount of the

deposit necessary to satisfy the regulations' security requirements. Section 703.203 describes the application process. As proposed, the carrier will submit yearly statements to the Branch of Financial Management and Insurance (Branch) within DLHWC setting forth its LHWCA obligations in each State where it does business. The carrier will also suggest an amount for the security deposit needed to fully secure such obligations. If the carrier chooses to base its suggested security deposit on a determination of a gap in State coverage that differs from that posted by DLHWC on its Web site, the carrier may submit evidence and/or argument in support.

20 CFR 703.204

Section 703.204 provides that the Branch may consider several different factors when it evaluates the carrier's suggested security deposit amount. One significant factor will be the extent to which a carrier's LHWCA obligations are secured by a State guaranty fund. Because State guaranty fund coverage varies dramatically among States, proposed § 703.204(b) adopts a sliding scale: carriers who write more than an insignificant amount of LHWCA insurance in States without guaranty funds or funds that only partially secure LHWCA obligations will be required to deposit an amount equal to 33⅓ percent of their outstanding LHWCA obligations in each State up to an amount equal to 100 percent of those obligations. DLHWC intends to evaluate a carrier's obligations on a state-by-state basis to determine the amount of its unsecured obligations in each State and to set the required security deposit in accordance with that evaluation. The carrier may challenge the Branch's decision by requesting a hearing before the Director of DLHWC. The Director will then issue the final agency decision on the application.

20 CFR 703.205, 703.207, 703.208

Once a final decision on the carrier's application is reached, section 703.205 requires the carrier to both execute an Agreement and Undertaking and post the required security within 45 days of its receipt of the decision. Neither of these requirements differs substantially from the requirements under DLHWC's current policy. In the Agreement and Undertaking, the carrier agrees to post the required security deposit and authorizes the Branch to seize the deposit if: (1) It defaults on any of its LHWCA obligations; (2) it fails to renew or replace deposited letters of credit or matured negotiable securities; (3) a State initiates insolvency proceedings against the carrier; or (4) it violates any of the other terms of the Agreement and Undertaking (§ 703.205(a)). This section also sets out the three ways a carrier can satisfy the requirement for posting a security deposit: through the use of approved indemnity bonds, letters of credit, or negotiable securities (§ 703.205(b)). If the carrier chooses to deposit negotiable securities, §§ 703.207 and 703.208 detail the types of securities that may be deposited, conditions of their deposit and places for their deposit. Section 703.206 is reserved.

20 CFR 703.209, 703.210

Substitutions and/or withdrawals of the instruments representing a carrier's security deposit, as well as changes in the amounts of such deposits, are governed by §§ 703.209 and 703.210. These regulations conform to the Branch's current practice, with two exceptions. The Department has made explicit in § 703.209(b) that "no withdrawals will be authorized unless there has been no claim activity for a minimum of five years, and the Branch is reasonably certain no further claims will arise." The Department has proposed this provision to insure that funds are available to pay all claims that are attributable to the carrier. The Department has also linked DLHWC's demand for an additional security deposit under § 703.210(a) with the procedures applicable to initial security deposit determinations, including a hearing before the Longshore Director or his representative upon the carrier's request. This provision ensures that the carrier has the same rights regarding a determination increasing the security deposit amount as when that amount was initially set.

20 CFR 703.211

Paragraphs (a) and (b) of § 703.211 together constitute one of the major improvements to DLHWC's policy. Currently, DLHWC seizes a carrier's security deposit when the carrier defaults on its LHWCA obligations. But to protect the special fund and ensure funds are available for compensation payments, DLHWC must take action on the deposited security when a carrier fails to secure future payments even though the carrier is meeting its current payment obligations. Accordingly, proposed §§ 703.211 (a) and (b) make explicit DLHWC's authority to draw upon a letter of credit or seize a carrier's deposit of negotiable securities at maturity when the carrier fails to keep its LHWCA obligations secured by renewing or replacing the deposited security, even if the carrier is not in default. Letters of credit currently acceptable to DLHWC routinely spell out this authority. While deposited negotiable securities do not contain similar terms, they are nevertheless held subject to DLHWC's order (*see* §§ 703.208 and 703.209). A carrier who has deposited negotiable securities with a Federal Reserve bank must withdraw (or roll over) those securities upon maturity. A viable carrier usually rolls the matured securities over or replaces them with new securities to continue meeting the security deposit requirements. A financially troubled carrier, however, may not be able to replace the matured securities. Rather than allowing the securities to revert to the carrier—assets that the carrier could deplete for purposes other than payment of LHWCA benefits—DLHWC will seize the negotiable securities at maturity and hold those funds as security for the carrier's future LHWCA obligations, even if the carrier has not yet defaulted on its obligations. Finally, proposed §§ 703.211 (a) and (b) codify DLHWC's authority to seize the deposited security when a State initiates insolvency proceedings against a carrier. Like a carrier that is unable to renew its posted security, an insolvent carrier may not be able to meet its LHWCA obligations. Seizure of the security insures continued payment of those obligations. When it determines that the security is no longer necessary, DLHWC will return any negotiable securities (and their proceeds) still in its possession to the carrier (§ 703.211(c)).

20 CFR 703.212

This section provides for the submission of certain periodic and *ad hoc* reports to the Branch so it can monitor the financial health of all authorized insurance carriers and thereby assist DLHWC fulfill its obligation as guardian of the special fund.

20 CFR 703.213

Should a carrier fail to meet its obligations under these security deposit regulations, § 703.213 clarifies that OWCP may revoke or suspend its authorization to write LHWCA insurance.

Authorization of Self-Insurers

The proposed revisions to §§ 703.301 through 703.312 are designed to: Modernize their language and structure; reflect organizational changes within OWCP; and conform them to both DLHWC's current policies and the proposed carrier security deposit regulations. As a result, most of the revisions are not intended to change the

substance of the current regulatory requirements. Several revisions, however, are noteworthy. Throughout this part, the proposed regulations add letters of credit as a method an employer may use to secure its LHWCA obligations. This is in addition to indemnity bonds and deposits of negotiable securities, the two methods set forth in the current regulations. Proposed § 703.303(b) clarifies that DLHWC's authorization to self-insure, although effective immediately, will later be deemed ineffective for all periods if the employer does not timely complete and file with DLHWC an Agreement and Undertaking and give security in the amount DLHWC requires. Proposed § 703.303(d) also affords employers the same hearing rights accorded carriers who wish to challenge DLHWC's security deposit determination in proposed § 703.204(d). Finally, like the carrier security deposit regulations, proposed §§ 703.310 (a) and (b) codify DLHWC's authority to draw upon a letter of credit or seize a self-insurer's deposit of negotiable securities at maturity when the self-insurer fails to keep its future LHWCA obligations secured by renewing or replacing the deposited security, even if the self-insurer has not defaulted on its current payment obligations.

III. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

The new collections of information contained in this rulemaking have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations at 5 CFR part 1320. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number.

The new information collection requirements are found in §§ 703.2, 703.203, 703.204, 703.205, 703.209, 703.210, 703.212, 703.303 and 703.304. With the exception of §§ 703.303 and 703.304, these collections relate to information insurance carriers are required to submit as part of the authorization process for writing LHWCA insurance, and as part of the process by which the Branch of Financial Management and Insurance within DLHWC decides both the extent of an authorized insurance carrier's unsecured LHWCA obligations and the amount of the required security deposit. To implement these new collections, the Department is proposing to create two new forms (Form LS–276 and LS–275 IC) described below. The information collections established in §§ 703.303 and 703.304 relate to the security a self-insured employer deposits to secure its payment of compensation under the LHWCA and its extensions. To implement these collections, the Department is proposing one new form (Form LS–275 SI) described below.

The public is invited to submit comments on the new information collection requirements. The Department is particularly interested in comments that:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

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

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

Send comments regarding these proposed collections of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503. Comments must be received by May 14, 2004.

This proposed rulemaking also restates, with no substantive changes, the currently approved collections of information in §§ 703.302, 703.308, 703.309 and 703.311 (Forms LS–271 and LS–274, OMB Control No. 1215–0160 (expires December 31, 2006)). These collections relate to information that employers applying to be self-insurers under the LHWCA and its extensions or who are currently authorized self-insurers must submit; the rulemaking does not change these collections in any manner.

A. Form LS–276, Application for Security Deposit Determination

Summary: As discussed above, the LHWCA gives the Secretary of Labor authority to authorize insurance carriers to write insurance under the Act and its extensions (33 U.S.C. 932). As a condition to authorization, each carrier will be required to establish that its LHWCA obligations are fully secured either through an applicable state guaranty (or analogous) fund, a deposit of security with DLHWC in an amount determined by DLHWC, or a combination of both. To meet these requirements, each currently authorized carrier and any carrier seeking such authorization will apply annually for a determination of the amount of security it must deposit by completing Form LS–276. Form LS–276 is structured to elicit information regarding a carrier's outstanding LHWCA obligations on a state-by-state basis. DLHWC will use the information collected on Form LS–276 to determine the required security deposit amount for each carrier in light of any applicable state guaranty fund coverage.

Respondents and frequency of response: Approximately 385 insurance carriers annually will file Form LS–276.

Total annual burden estimates: The Department estimates that on average, it will take an insurance carrier one hour to collect the information, complete Form LS–276 and mail it. Thus, the total annual hour burden is estimated to be 385 hours. There are no capital or startup costs associated with this information collection. The Department estimates respondents' total annual operating and maintenance (printing and mailing) costs to be $163.80.

B. LS–275 IC, Agreement and Undertaking (Insurance Carrier); LS–275 SI, Agreement and Undertaking (Self-Insured Employer)

Summary: After DLHWC determines the amount of the required security deposit, an insurance carrier or self-insured employer will execute Form LS–275 IC or LS–275 SI, respectively, to: (1) Report the security it has deposited and grant the Department a security interest in the collateral; (2) agree to abide by the Department's rules; and (3) authorize the Department to bring suit on any deposited indemnity bond, draw upon any deposited letters of credit, or to collect the interest and principal or sell any deposited negotiable securities when it deems it necessary to assure the carrier's or self-insurer's prompt and continued payment of compensation and any other LHWCA obligations it has. DLHWC will review the information collected to verify that the carrier or self-insurer has deposited the correct amount of security. DLHWC will also use this information if it takes action on the security deposited when necessary to insure that the carrier or self-insurer meets its LHWCA obligations.

Respondents and proposed frequency of response: The Department estimates

that approximately 343 (or 50%) of all authorized insurance carriers and self-insurers annually will complete and file Form LS–275 IC or LS–275 SI.

Total annual burden estimates: The Department estimates that on average, it will take a respondent 15 minutes to locate the information, complete form LS–275 IC or LS–275 SI and mail it. Thus, the total annual hour burden is estimated to be 85.75 hours. There are no capital or startup costs associated with this information collection. The Department estimates respondents' total annual operating and maintenance (printing and mailing) costs to be $145.60.

Copies of the complete information collection request, including the OMB 83–I form and supporting statement, may be obtained from the Department of Labor by contacting Linda Myer at 202–693–0289 (this is not a toll free number).

IV. Statutory Authority

Section 39 of the LHWCA (33 U.S.C. 939) authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the Act and its extensions, and section 32 of the LHWCA (33 U.S.C. 932) requires that all insurance carriers writing coverage under the LHWCA and all employers seeking to self-insure its liabilities be authorized by the Secretary.

V. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), entitled "The Principles of Regulation." The Department has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

VI. Small Business Regulatory Enforcement Fairness Act of 1996

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996, enacted as Title II of Public Law 104–121, 110 Stat. 847, 857 (March 29, 1996), the Department will report promulgation of this proposed rule to both Houses of the Congress and to the Comptroller General prior to its effective date as a final rule. The report will state that the Department has concluded that the rule is not a "major rule" as defined under 5 U.S.C. 804(2).

VII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to 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." For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100,000,000.

VIII. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601 *et seq.*), requires an agency to prepare regulatory flexibility analyses when it proposes regulations that will have "a significant economic impact on a substantial number of small entities," or to certify that the proposed regulations will have no such impact, and to make the analyses or certification available for public comment.

If promulgated as a final rule, the proposed carrier security deposit regulations would apply to the approximately 385 insurance carriers currently authorized by DLHWC to write LHWCA insurance, as well as to any other carriers seeking such authorization in the future.

To evaluate the proposed rule's potential impact on small entities, the Department evaluated insurance carriers currently authorized to write Longshore insurance. While carriers enter and leave the market over time and their individual liability fluctuates, over at least the past two years the number and nature of the authorized carrier pool and the total benefit payments made by insurance carriers have remained relatively constant. Moreover, many of these carriers already comply with the security deposit requirements that the proposed regulations would impose on all carriers. Finally, because authorized carriers must file annual reports detailing LHWCA payments they have made for the prior calendar year, the Department possesses concrete information supplied by these carriers on which to base its analysis. Thus, the Department believes that the recent past experience of authorized carriers forms a valid basis for judging the potential impact of the proposed rule.

The Department first determined the number of small entities in the authorized carrier group. The Department divided the authorized carrier group into two segments based on their classifications under the North American Industry Classification System for 2002 (NAICS 2002). It then applied the Small Business Administration's (SBA) size standards for each of these segments.[1]

The first segment is direct property and casualty insurers (code 524126). For these insurers, the SBA size standard is 1,500 employees, regardless of a firm's annual revenues. Entities with fewer employees are considered "small" for RFA purposes. Applying this size standard, the Department estimates that one direct property and casualty insurer authorized to write Longshore insurance is "small."

The second segment is all other insurers (including direct life insurance carriers, code 524113; direct health and medical insurance carriers, code 524114; direct title insurance carriers, code 524127; all other direct insurance carriers, code 524128; and reinsurance carriers, code 524130). The SBA's size standard for the rest of the insurance carrier industry is annual revenues of $6,000,000. Entities with revenues falling below this amount are considered "small" for RFA purposes. Applying this size standard, the Department estimates that three of the authorized carriers falling into the remaining categories are "small." Thus, of the 385 carriers authorized to write Longshore insurance, the Department estimates that approximately 4, or a total of 1.05%, are small entities under the SBA's size standards.[2]

The Department then evaluated the potential impact the proposed regulations would have had on these four individual insurance carriers had they been in place for calendar years 2001 and 2002. Two of these carriers currently have no security deposited and, for calendar years 2001 and 2002,

[1] The Department was unable to determine the number of employees and/or total revenues for seven authorized carriers and, thus, unable to determine whether they meet the SBA's size standards for small entities. These entities include two non-U.S. public companies.

[2] Two of these four carriers are not-for-profit; thus, they potentially meet the "small organization" definition in RFA section 601(4). To determine whether these carriers should be considered small, the Department applied the SBA size standards for a "small business." Both carriers meet those standards. Thus, the Department has classified both as "small organizations." Because these carriers serve the same function and would be governed by the same security deposit requirements as for-profit carriers, the Department has chosen to include them with the "small business" carriers in evaluating the proposed rule's potential impact.

paid no Longshore benefits. Under the proposed rule, these carriers would not have had to post a security deposit because the rule ties the security deposit amount to a carrier's current liabilities. Thus, for these two small carriers, the rule would have imposed no additional cost.

The third carrier's premium revenues (apart from other income) for calendar year 2002 totaled $3,262,000. During calendar years 2001 and 2002, which are representative of average years for this carrier, the carrier paid a total of $47,000 in Longshore benefits. In 1992, this carrier posted $400,000 in negotiable securities to secure its liabilities. Under the proposed rules, this carrier would not have been required to post security because it is in a State whose guaranty fund fully secures Longshore Act obligations. Thus, its security deposit would have been reduced. Even assuming this or a similar carrier were required to post $400,000 under the proposed rules because it was not in such a State, it could have met its security obligation by a method requiring a small initial cash outlay, such as by purchasing an indemnity bond. The Department estimates a $400,000 bond would cost approximately $6,000–$8000 at typical current rates; that cost amounts to only 0.18% to 0.24% of the carrier's 2002 revenues. Many carriers choose to deposit negotiable securities to secure their obligations, as this one did. Although in this case the deposit of $400,000 in negotiable securities amounted to approximately 12% of the carrier's 2002 revenues, the carrier continued to own the securities (subject to DLHWC's security interest) and received the income generated by them. Moreover, because carriers may freely choose whether to deposit negotiable securities or purchase an indemnity bond, the appropriate cost measure for this analysis is the cost of the indemnity bond.

The fourth carrier is a direct property and casualty insurer that is classified as "small" because it employs fewer than 1,500 people. Its high premium revenues, however, render its security deposit obligations under both DLHWC's current policy and the proposed regulations insignificant. For calendar year 2002, this carrier's premium revenues (apart from other income) totaled approximately $300,000,000. It pays, on average, $2,000,000 per year in Longshore benefits and currently has posted $3,125,000 in negotiable securities to secure its LHWCA obligations. Assuming the same deposit would be required under the proposed rule, the cost to the carrier would be approximately 1.04% of its annual revenues, a percentage the Department does not deem significant especially because the carrier would continue to receive any income from the negotiable securities posted.

Thus, the Department believes that the proposed rule will have no significant economic impact on any currently authorized small carriers. For reasons similar to those explained above, the Department further believes that the proposed rule will have no significant economic impact on possible small carrier entrants.

Small carriers who would not be required to post security deposits with DLHWC under its current policy (such as carriers doing business in States with guaranty funds that fully secure their liability) will for the same reason likely not be required to post security deposits, including the minimum security provided for in proposed § 703.204(c), under the proposed policy. Other small carriers will only have to post security deposits in the amount of their own current obligations, making posting more affordable for firms with low liabilities and thus making entry easier for small firms that would like to enter this market. Indeed, the proposed rules will not require the posting of any security by carriers with no outstanding obligations, so such carriers would no longer have to post the minimum $200,000 deposit that DLHWC currently requires of all carriers who do not have an A or better rating from the A.M. Best Company.

The proposed regulations will also result in a financial benefit to some small carriers in another way. Once all carriers have fully secured their liabilities, as the proposed rule requires, special fund assessments for those small carriers who must pay them are expected to decrease. The special fund's costs, which are calculated and assessed against authorized Longshore insurance carriers and self-insured employers each year, are primarily incurred for benefit payments in two circumstances: (1) When a carrier (and the employer it insured) or a self-insurer are insolvent; and (2) when a carrier or employer is entitled to relief under 33 U.S.C. 908(f) (second-injury fund). Because the requirement that liabilities be fully secured should decrease the fund's costs for benefits paid on behalf of insolvent carriers, the special fund assessments levied against small carriers are expected to decrease commensurately.

Although not dispositive, the Department has also noted that no carriers—small or otherwise—left the authorized carrier ranks when DLHWC first instituted its security deposit requirements in 1990. Moreover, no one who responded to DLHWC's Request For Information published in the **Federal Register** on February 22, 2002, expressed concern over any impact that OWCP's current security deposit requirements or those it might adopt would have on small entities.

Thus, whether viewed as four small entities out of 385, 11 small entities (four plus the seven carriers the Department was unable to classify) out of 385, or no entities within the four identified as small, the Department concludes that the proposed carrier security deposit rules will not have a significant economic impact on a substantial number of small entities.

The Department also believes that the proposed revisions to the self-insurer authorization regulations will not have a significant economic impact on a substantial number of small entities. These revisions do not change the financial or record-keeping requirements currently imposed on self-insurers. As explained above, the revisions are principally designed to modernize the rules' language and structure, reflect organizational changes within OWCP, and conform the rules to DLHWC's current policies and practices. For instance, the proposed revisions codify DLHWC's longstanding policy of allowing self-insurers to use letters of credit from approved financial institutions to secure their LHWCA obligations. DLHWC will continue to require self-insured employers to deposit security in the same amounts and form as under the current regulations. Thus, the proposed revisions to the self-insurer regulations will not have a significant economic impact on any entities, including those that might be classified as small under the SBA's size standards.

The Assistant Secretary of Labor for Employment Standards hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory impact analysis is required. The factual basis for this certification is set out above. The Department invites comments from members of the public who believe the proposed regulations will have a significant economic impact on a substantial number of small insurance carriers or employers seeking authority to self-insure. The Assistant Secretary has also provided the Chief Counsel for Advocacy with a copy of this certification, together with the factual basis for the certification.

IX. Executive Order 12988 (Civil Justice)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system if promulgated as a final rule. The LHWCA does not provide any specific procedures for insurance carriers to follow in order to seek review of DLHWC decisions regarding the extent of their LHWCA obligations and the amount of any required security deposit. Nor does the statute set out procedures for employers denied authorization to self-insure or who disagree with the security deposit amount set by DLHWC. A very small number of these carriers and employers annually (three or less) will likely seek review of adverse decisions in the United States district courts pursuant to the Administrative Procedure Act. This rule should minimize the burden placed upon the courts by litigation seeking to challenge these decisions by giving carriers and employers an opportunity to seek administrative review of adverse decisions and by providing a clear legal standard for such decisions. The rule has also been reviewed carefully to eliminate drafting errors and ambiguities.

X. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The proposed rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government," if promulgated as a final rule.

XI. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Department has evaluated the environmental health and safety effects this proposed rule would have on children. The Department has determined that if promulgated as a final rule, the proposed rule would have no effect on children.

XII. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, the Department has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that this rule, if promulgated as a final rule, would likely not have a significant adverse effect on them.

XIII. Congressional Review Act

This proposed rule is not a "major rule" as defined in the Congressional Review Act (5 U.S.C. 801 *et seq.*). If promulgated as a final rule, this rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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 and export markets.

XIV. Catalog of Federal Domestic Assistance Number

This program is not listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 701

Longshore and harbor workers, Organization and functions (government agencies), Workers' compensation.

20 CFR Part 703

Bonds, Insurance companies, Longshore and harbor workers, Reporting and recordkeeping requirements, Securities, Workers' compensation.

For the reasons set forth in the preamble, title 20, chapter VI, subchapter A of the Code of Federal Regulations is proposed to be amended as follows:

PART 701—GENERAL PROVISIONS, DEFINITIONS AND USE OF TERMS

1. The authority citation for part 701 is revised to read as follows:

Authority: 5 U.S.C. 301 and 8171 *et seq.*; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263.

2. Revise § 701.101 to read as follows:

§ 701.101 Scope of this subchapter and subchapter B.

(a) This subchapter contains the regulations governing the administration of the Longshore and Harbor Workers' Compensation Act, as amended (LHWCA), 33 U.S.C. 901 *et seq.*, except activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary of Labor for Occupational Safety and Health. It also contains the regulations governing the administration of the direct extensions of the LHWCA: the Defense Base Act (DBA), 42 U.S.C. 1651 *et seq.*; the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331; and the Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 *et seq.*

(b) The regulations in this subchapter also apply to claims filed under the District of Columbia Workmen's Compensation Act (DCCA), 36 D.C. Code 501 *et seq.* That law applies to all claims for injuries or deaths based on employment events that occurred prior to July 26, 1982, the effective date of the District of Columbia Workers' Compensation Act, as amended (D.C. Code 32–1501 *et seq.*).

(c) The regulations governing the administration of the Black Lung Benefits Program are in subchapter B of this chapter.

3. Revise § 701.102 to read as follows:

§ 701.102 Organization of this subchapter.

Part 701 provides a general description of the regulations in this subchapter; sets forth information regarding the persons and agencies within the Department of Labor authorized by the Secretary of Labor to administer the Longshore and Harbor Workers' Compensation Act, its extensions and the regulations in this subchapter; and defines and clarifies use of specific terms in the several parts of this subchapter. Part 702 of this subchapter contains the general administrative regulations governing claims filed under the LHWCA. Part 703 of this subchapter contains the regulations governing insurance carrier authorizations, insurance carrier security deposits, self-insurer authorizations, and certificates of compliance with the insurance regulations, as required by sections 32 and 37 of the LHWCA (33 U.S.C. 932, 937). Because the extensions of the LHWCA (*see* § 701.101) incorporate by reference nearly all the provisions of the LHWCA, the regulations in parts 701, 702 and 703 also apply to the administration of the extensions (DBA, DCCA, OCSLA, and NFIA), unless otherwise noted. Part 704 of this subchapter contains the exceptions to the general applicability of parts 702 and 703 for the DBA, the DCCA, the OCSLA, and the NFIA.

4. Revise § 701.201 to read as follows:

§ 701.201 Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs (OWCP) is responsible for administering the LHWCA and its extensions (*see* 20 CFR 1.2(e)). The regulations in subchapter A of chapter I of this title (20 CFR part 1) describe OWCP's establishment within the Employment Standards Administration, the functions assigned to it by the Assistant Secretary of Labor for Employment Standards, and how those functions were performed before OWCP's establishment.

§ 701.202 [Reserved]

§ 701.203 [Reserved]

5. Remove and reserve §§ 701.202 and 701.203.

6. Amend § 701.301 by revising paragraphs (a)(1), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(12)(i)(B), (a)(12)(ii)(A) and (a)(12)(iii)(E) to read as follows:

§ 701.301 Definitions and use of terms.

(a) * * *

(1) *Act* or *LHWCA* means the Longshore and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 *et seq.*), and includes the provisions of any statutory extension of such Act (see § 701.101(a) and (b)) pursuant to which compensation on account of an injury is sought.

* * * * *

(5) *Office of Workers' Compensation Programs* or *OWCP* or *the Office* means the Office of Workers' Compensation Programs within the Employment Standards Administration, referred to in § 701.201 and described more fully in part 1 of this title. The term *Office of Workmen's Compensation Programs* shall have the same meaning as *Office of Workers' Compensation Programs* (*see* 20 CFR 1.6(b)).

(6) *Director* means the Director of OWCP, or his or her authorized representative.

(7) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA or his or her designee, authorized to perform functions with respect to the processing and determination of claims for compensation under the LHWCA and its extensions as provided therein and under this subchapter. The term District Director is substituted for the term *Deputy Commissioner* used in the statute. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute. Any action taken by a person under the authority of a district director will be considered the action of a deputy commissioner.

(8) *Administrative Law Judge* means a person appointed as provided in 5 U.S.C. 3105 and subpart B of 5 CFR part 930, who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for compensation arising under the LHWCA and its extensions.

(9) *Chief Administrative Law Judge* means the Chief Judge of the Office of Administrative Law Judges, United States Department of Labor, whose office is at the location set forth in 29 CFR 18.3(a).

(10) *Board or Benefits Review Board* means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as amended and constituted and functioning pursuant to the provisions of chapter VII of this title and Secretary of Labor's Order No. 38–72 (38 FR 90), whose office is at the location set forth in 20 CFR 802.204.

* * * * *

(12) (i) * * *

(B) Any harbor worker, including a ship repairer, shipbuilder and shipbreaker; and

* * * * *

(ii) * * *

(A) A master or member of a crew of any vessel; or

* * * * *

(iii) * * *

(E) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species; or

* * * * *

PART 703—INSURANCE REGULATIONS

7. The authority citation for part 703 is revised to read as follows:

Authority: 5 U.S.C. 301 and 8171 *et seq.*; 31 U.S.C. 9701; 33 U.S.C. 932 and 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 4–2001, 66 FR 29656.

8. Amend part 703 by designating §§ 703.1 through 703.3 as "Subpart A—Generals," by designating the center heading "Authorization of Insurance Carriers" as "Subpart B—Authorization of Insurance Carriers" and revising subpart A to read as follows:

Subpart A—General

Subpart B—Authorization of Insurance Carriers

* * * * *

Subpart A—General

§ 703.1 Scope of part.

Part 703 governs insurance carrier authorizations, insurance carrier security deposits, self-insurer authorizations, and certificates of compliance with the insurance regulations. These provisions are required by the LHWCA and apply to the extensions of the LHWCA except as otherwise provided in part 704 of this subchapter.

§ 703.2 Forms.

(a) Any information required by the regulations in this part to be submitted to OWCP must be submitted on forms the Director authorizes from time to time for such purpose. Persons submitting forms may not modify the forms or use substitute forms without OWCP's approval.

Form No.	Title
(1) LS–271	Application for Self-Insurance.
(2) LS–274	Report of Injury Experience.
(3) LS–275 SI	Self-Insurer's Agreement and Undertaking.
(4) LS–275 IC	Insurance Carrier's Agreement and Undertaking.
(5) LS–276	Application for Security Deposit Determination.
(6) LS–405	Indemnity Bond.
(7) LS–570	Card Report of Insurance.

(b) Copies of the forms listed in this section are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. They may also be obtained from OWCP district offices and on the Internet at *http://www.dol.gov/esa/owcp/dlhwc/lsforms.htm*.

§ 703.3 Failure to secure coverage; penalties.

(a) Each employer must secure the payment of compensation under the Act either through an authorized insurance carrier or by becoming an authorized self-insurer under section 32(a)(1) or (2) of the Act (33 U.S.C. 932(a)(1) or (2)).

An employer who fails to comply with these provisions is subject, upon conviction, to a fine of not more than $10,000, or by imprisonment for not more than one year, or both. Where the employer is a corporation, the president, secretary and treasurer each will also be subject to this fine and/or imprisonment, in addition to the fine against the corporation, and each is severally personally liable, jointly with the corporation, for all compensation or other benefits payable under the Act while the corporation fails to secure the payment of compensation.

(b) Any employer who willingly and knowingly transfers, sells, encumbers, assigns or in any manner disposes of, conceals, secretes, or destroys any property belonging to the employer after an employee sustains an injury covered by the Act, with the intent to avoid payment of compensation under the Act to that employee or his/her dependents, shall be guilty of a misdemeanor and punished, upon conviction, by a fine of not more than $10,000 and/or imprisonment for one year. Where the employer is a corporation, the president, secretary and treasurer are also severally liable to imprisonment and, along with the corporation, jointly liable for the fine.

9. Amend Part 703 by adding subpart designations to the undesignated center headings "Authorization of Self-Insurers" and "Issuance of Certificates of Compliance," adding Subpart C, and revising subpart D to read as follows:

Subpart C—Insurance Carrier Security Deposit Requirements

Sec.

Subpart D—Authorization of Self-Insurers

Subpart E—Issuance of Certificates of Compliance

* * * * *

Subpart C—Insurance Carrier Security Deposit Requirements

§ 703.201 Deposits of security by insurance carriers.

The regulations in this subpart require certain insurance carriers to deposit security in the form of indemnity bonds, letters of credit or negotiable securities (chosen at the option of the carrier) of a kind and in an amount determined by the Office, and prescribe the conditions under which deposits must be made. Security deposits secure the payment of benefits when an insurance carrier defaults on any of its obligations under the LHWCA, regardless of the date such obligations arose. They also secure the payment of benefits when a carrier with LHWCA obligations becomes insolvent in States with no insurance guaranty funds, or with guaranty funds that do not fully secure such obligations. Any gap in State guaranty fund coverage will have a direct effect on the amount of security the Office will require a carrier to post. The terms "obligations under the Act" and "LHWCA obligations" include a carrier's obligations arising under the Longshore and Harbor Workers' Compensation Act and any of its extensions.

§ 703.202 Identification of significant gaps in State guaranty fund coverage for LHWCA obligations.

(a) In determining the amount of a carrier's required security deposit, the Office will consider the extent to which a State guaranty fund secures the insurance carrier's LHWCA obligations in that State. When evaluating State guaranty funds, the Office may consider a number of factors including, but not limited to—

(1) Limits on weekly benefit amounts;

(2) Limits on aggregate maximum benefit amounts;

(3) Time limits on coverage;

(4) Ocean marine exclusions;

(5) Employer size and viability provisions; and

(6) Financial strength of the State guaranty fund itself.

(b) OWCP will identify States without guaranty funds and States with guaranty funds that do not fully and immediately secure LHWCA obligations and will post its findings on the Internet at *http://www.dol.gov/esa/owcp/dlhwc/lstable.htm*. These findings will indicate the extent of any partial or total gap in coverage provided by a State guaranty fund, and they will be open for inspection and comment by all interested parties. If the extent of coverage a particular State guaranty fund provides either cannot be determined or is ambiguous, OWCP will deem one third (33⅓ percent) of a carrier s LHWCA obligations in that State to be unsecured. OWCP will revise its findings from time to time, in response to substantiated public comments it receives or for any other reasons it considers relevant.

§ 703.203 Application for security deposit determination; information to be submitted; other requirements.

(a) Each insurance carrier authorized by OWCP to write insurance under the LHWCA or any of its extensions, and each insurance carrier seeking initial authorization to write such insurance, must apply annually, on a schedule set by OWCP, for a determination of the extent of its unsecured obligations and the security deposit required. The application must be addressed to the Branch of Financial Management and Insurance (Branch) within OWCP's Division of Longshore and Harbor Workers' Compensation, and be made on a form provided by OWCP. The application must contain—

(1) A statement of the carrier's outstanding liabilities under the LHWCA or any of its extensions for its

LHWCA obligations for each State in which the obligations arise;

(2) A statement:

(i) Of the deposit amount it believes will fully secure its obligations; or

(ii) That it has sufficient assets or other means to fully secure its obligations; and

(3) Any other information the Branch requests to enable it to give the application adequate consideration including, but not limited to, the reports set forth at § 703.212.

(b) If the carrier disagrees with any of OWCP's findings regarding State guaranty funds made under § 703.202(b) as they exist when it submits its application, the carrier may submit a statement of its unsecured obligations based on a different conclusion regarding the extent of coverage afforded by one or more State guaranty funds. The carrier must submit evidence and/or argument with its application sufficient to establish that such conclusion is correct.

(c) The carrier must sign and swear to the application. If the carrier is not an individual, the carrier's duly authorized officer must sign and swear to the application and list his or her official designation. If the carrier is a corporation, the officer must also affix the corporate seal.

(d) At any time after filing an application, the carrier must inform the Branch immediately of any material changes that may have rendered its application incomplete, inaccurate or misleading.

(e) By filing an application, the carrier consents to be bound by and to comply with the regulations and requirements in this part.

§ 703.204 Decision on insurance carrier's application; minimum amount of deposit.

(a) The Branch will issue a decision on the application determining the extent of an insurance carrier's unsecured LHWCA obligations and fixing the amount of security the carrier must deposit to fully secure payment of its unsecured obligations. The Branch will transmit its decision to the applicant in a way it considers appropriate.

(b) The Branch may reject the deposit amount suggested by the insurance carrier in its application and make its own determination of this amount. When evaluating the suggested amount, the Branch may consider a number of factors including, but not limited to, the—

(1) Financial strength of the carrier;

(2) Financial strength of the carrier's insureds;

(3) Carrier's reinsurance protection;

(4) Carrier's surplus and its recent settlements;

(5) Amount of the carrier's business that is written through the National Reinsurance Pool operated by the National Council on Compensation Insurance or other assigned risk pool providing full protection for LHWCA obligations;

(6) Carrier's deductibles secured by letters of credit;

(7) Carrier's reduced exposure;

(8) Carrier's increases in capitalization;

(9) Extent to which State guaranty funds secure the carrier's LHWCA obligations in the event the carrier defaults on its obligations or becomes insolvent; and

(10) Carrier's expansion of business into additional States with guaranty funds that will not fully secure its LHWCA obligations.

(c) The Branch will require all carriers that write LHWCA insurance in one or more of the States identified by OWCP under § 703.202(b) to deposit security for its unsecured LHWCA obligations in each State identified. For carriers that write only an insignificant or incidental amount of LHWCA insurance, the Branch will require a deposit in an amount determined by the Branch from time to time. For all other carriers, the Branch will require a minimum deposit of one third (33⅓ percent) of a carrier's outstanding LHWCA obligations in each State, but may require a deposit up to an amount equal to the carrier's total outstanding LHWCA obligations (100 percent) in each State.

(d) If a carrier believes that a lesser deposit would fully secure its LHWCA obligations, the carrier may request a hearing before the Director of the Division of Longshore and Harbor Workers' Compensation (Longshore Director) or the Longshore Director's representative. Requests for hearing must be in writing and sent to the Branch within 10 days of the date of the Branch's decision. The carrier may submit new evidence and/or argument in support of its challenge to the Branch's decision and must provide any additional documentation OWCP requests. The Longshore Director or his representative will notify the carrier of the hearing date within 10 days of receiving the request. The Longshore Director or his representative will issue the final agency decision on the application within 60 days of the hearing date, or, where evidence is submitted after the hearing, within 60 days of the receipt of such evidence, but no later than 180 days after receiving the carrier's request for a hearing.

§ 703.205 Filing of Agreement and Undertaking; deposit of security.

Within 45 days of the date on which the insurance carrier receives the Branch's decision (or, if the carrier requests a hearing, a period set by the Longshore Director or the Longshore Director's representative) determining the extent of its unsecured LHWCA obligations and fixing the required security deposit amount (see § 703.203), the carrier must:

(a) Execute and file with the Branch an Agreement and Undertaking, in a form prescribed and provided by OWCP, in which the carrier shall agree to—

(1) Deposit with the Branch indemnity bonds or letters of credit in the amount fixed by the Office, or deposit negotiable securities under §§ 703.207 and 703.208 in that amount;

(2) Authorize the Branch, at its discretion, to bring suit under any deposited indemnity bond or to draw upon any deposited letters of credit, as appropriate under the terms of the security instrument, or to collect the interest and principal as they become due on any deposited negotiable securities and to sell or otherwise liquidate such negotiable securities or any part thereof when—

(i) The carrier defaults on any of its LHWCA obligations;

(ii) The carrier fails to renew any deposited letter of credit or substitute acceptable securities in its place;

(iii) The carrier fails to renew any deposited negotiable securities at maturity or substitute acceptable securities in their place;

(iv) State insolvency proceedings are initiated against the carrier; or

(v) The carrier fails to comply with any of the terms of the Agreement and Undertaking; and

(3) Authorize the Branch, at its discretion, to pay such ongoing claims of the carrier as it may find to be due and payable from the proceeds of the deposited security;

(b) Give security in the amount fixed in the Office's decision:

(1) In the form of an indemnity bond with sureties satisfactory to the Branch and in such form, and containing such provisions, as the Branch may prescribe: *Provided,* That only surety companies approved by the United States Treasury Department under the laws of the United States and the rules and regulations governing bonding companies may act as sureties on such indemnity bonds (*see* Department of Treasury's Circular-570), and that a surety company that is a corporate subsidiary of an insurance carrier may

not act as surety on such carrier's indemnity bond;

(2) In the form of letters of credit issued by a financial institution satisfactory to the Branch and upon which the Branch may draw; or

(3) By a deposit of negotiable securities with a Federal Reserve Bank or the Treasurer of the United States in compliance with §§ 703.207 and 703.208.

§ 703.206 [Reserved]

§ 703.207 Kinds of negotiable securities that may be deposited; conditions of deposit; acceptance of deposits.

An insurance carrier electing to deposit negotiable securities to secure its obligations under the Act in the amount fixed by the Office under the regulations in this part shall deposit any negotiable securities acceptable as security for the deposit of public monies of the United States under regulations issued by the Secretary of the Treasury. (*See* 31 CFR part 225.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 703.208 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; interest thereon.

Deposits of negotiable securities provided for by the regulations in this part must be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Branch, or the Treasurer of the United States, and must be held subject to the order of the Branch. The Branch may, however, authorize the insurance carrier to collect interest on the securities deposited by it.

§ 703.209 Substitution and withdrawal of indemnity bond, letters of credit or negotiable securities.

(a) No substitution or withdrawal of an indemnity bond, letters of credit or negotiable securities deposited by an insurance carrier under the regulations in this part shall be made except when authorized by the Branch. A carrier that has ceased to write insurance under the Act may apply to the Branch for withdrawal of its security deposit. The carrier must file with its application a sworn statement setting forth—

(1) A list of all cases in each State in which the carrier is paying compensation, together with the names of the employees and other beneficiaries, a description of causes of injury or death, and a statement of the amount of compensation paid;

(2) A similar list of all pending cases in which the carrier has not yet paid compensation; and

(3) A similar list of all cases in which injury or death has occurred within one year before such application or in which the last payment of compensation was made within one year before such application.

(b) The Branch may authorize withdrawal of previously-deposited indemnity bonds, letters of credit and negotiable securities that, in the opinion of the Branch, are not necessary to provide adequate security for the payment of the carrier's outstanding and potential LHWCA liabilities. No withdrawals will be authorized unless there has been no claim activity involving the carrier for a minimum of five years, and the Branch is reasonably certain that no further claims will arise.

§ 703.210 increase or reduction in security deposit amount.

(a) Whenever the Office considers the security deposited by an insurance carrier insufficient to fully secure the carrier's LHWCA obligations, the carrier must, upon demand by the Branch, deposit additional security in accordance with the regulations in this part in an amount fixed by the Branch. The Branch will issue its decision requiring additional security in accordance with § 703.204, and the procedures set forth at §§ 703.204(d) and 703.205 for requesting a hearing and complying with the Office's decision will apply as appropriate.

(b) The Branch may reduce the required security at any time on its own initiative, or upon application of a carrier, when in the Branch's opinion the facts warrant a reduction. A carrier seeking a reduction must furnish any information the Office requests regarding its outstanding LHWCA obligations for any State in which it does business, its obligations not secured by a State guaranty fund in each of these States, and any other evidence as the Branch considers necessary.

§ 703.211 Authority to seize security deposit; use and/or return of proceeds.

(a) The Office may take any of the actions set forth in paragraph (b) of this section when an insurance carrier—

(1) Defaults on any of its LHWCA obligations;

(2) Fails to renew any deposited letter of credit or substitute acceptable securities in its place;

(3) Fails to renew any deposited negotiable securities at maturity or substitute acceptable securities in their place;

(4) Has State insolvency proceedings initiated against it; or

(5) Fails to comply with any of the terms of the Agreement and Undertaking.

(b) When any of the conditions set forth in paragraph (a) of this section occur, the Office may, within its discretion and as appropriate to the security instrument—

(1) Bring suit under any indemnity bond;

(2) Draw upon any letters of credit;

(3) Seize any negotiable securities, collect the interest and principal as they may become due, and sell or otherwise liquidate the negotiable securities or any part thereof.

(c) When the Office, within its discretion, determines that it no longer needs to collect the interest and principal of any negotiable securities seized pursuant to paragraphs (a) and (b) of this section, or to retain the proceeds of their sale, it must return any of the carrier's negotiable securities still in its possession and any remaining proceeds of their sale.

§ 703.212 Required reports; examination of insurance carrier accounts.

(a) Upon the Office's request, each insurance carrier must submit the following reports:

(1) A certified financial statement of the carrier's assets and liabilities, or a balance sheet.

(2) A sworn statement showing the extent of the carrier's unsecured LHWCA obligations for each State in which it is authorized to write insurance under the LHWCA or any of its extensions.

(3) A sworn statement reporting the carrier's open cases as of the date of such report, listing by State all death and injury cases, together with a report of the status of all outstanding claims.

(b) Whenever it considers necessary, the Office may inspect or examine a carrier's books of account, records, and other papers to verify any financial statement or other information the carrier furnished to the Office in any statement or report required by this section, or any other section of the regulations in this part. The carrier must permit the Office or its duly authorized representative to make the inspection or examination. Alternatively, the Office may accept an adequate independent audit by a certified public accountant.

§ 703.213 Failure to comply.

The Office may suspend or revoke a carrier's certificate of authority to write LHWCA insurance under § 703.106 when the carrier fails to comply with any of the requirements of this part.

Subpart D—Authorization of Self-Insurers

§ 703.301 Employers who may be authorized as self-insurers.

The regulations in this subpart set forth procedures for authorizing employers to self-insure the payment of compensation under the Longshore and Harbor Workers' Compensation Act, or its extensions. The Office may authorize any employer to self-insure who, pursuant to the regulations in this part, furnishes to the Office satisfactory proof of its ability to pay compensation directly, and who agrees to immediately cancel any existing insurance policy when OWCP approves the employer's application to be self-insured. The regulations require self-insurers to deposit security in the form of an indemnity bond, letters of credit or negotiable securities (at the option of the employer) of a kind and in an amount determined by the Office, and prescribe the conditions under which such deposits shall be made. The term "self-insurer" as used in this part means any employer securing the payment of compensation under the LHWCA or its extensions in accordance with the provisions of 33 U.S.C. 932(a)(2) and this part.

§ 703.302 Application for authority to become a self-insurer; how filed; information to be submitted; other requirements.

(a) Any employer may apply to become an authorized self insurer. The application must be addressed to the Branch of Financial Management and Insurance (Branch) within OWCP's Division of Longshore and Harbor Workers' Compensation, and be made on a form provided by OWCP. The application must contain—

(1) A statement of the employer's total payroll for the 12 months before the application date;

(2) A statement of the average number of employees engaged in employment within the purview of the LHWCA or any of its extensions for the 12 months before the application date;

(3) A statement of the number of injuries to such employees resulting in disability of more than 7 days' duration, or in death, during each of the 5 years before the application date;

(4) A certified financial report for each of the three years before the application date;

(5) A description of the facilities maintained or the arrangements made for the medical and hospital care of injured employees;

(6) A statement describing the provisions and maximum amount of any excess or catastrophic insurance; and

(7) Any other information the Branch requests to enable it to give the application adequate consideration including, but not limited to, the reports set forth at § 703.310.

(b) The employer must sign and swear to the application. If the employer is not an individual, the employer's duly authorized officer must sign and swear to the application and list his or her official designation. If the employer is a corporation, the officer must also affix the corporate seal.

(c) At any time after filing an application, the employer must inform the Branch immediately of any material changes that may have rendered its application incomplete, inaccurate or misleading.

(d) By filing an application, the employer consents to be bound by and to comply with the regulations and requirements in this part.

§ 703.303 Decision on employer's application.

(a) The Branch will issue a decision granting or denying the employer's application to be an authorized self-insurer. If the Branch grants the application, the decision will fix the amount of security the employer must deposit. The Branch will transmit its decision to the employer in a way it considers appropriate.

(b) The employer is authorized to self-insure beginning with the date of the Branch's decision. Each grant of authority to self-insure is conditioned, however, upon the employer's execution and filing of an Agreement and Undertaking and deposit of the security fixed in the decision in the form and within the time limits required by § 703.304. In the event the employer fails to comply with the requirements set forth in § 703.304, its authorization to self-insure will be considered never to have been effective, and the employer will be subject to appropriate penalties for failure to secure its LHWCA obligations.

(c) The Branch will require security in the amount it considers necessary to fully secure the employer's LHWCA obligations. When fixing the amount of security, the Branch may consider a number of factors including, but not limited to, the—

(1) Employer's overall financial standing;

(2) Nature of the employer's work;

(3) Hazard of the work in which the employees are employed;

(4) Employer's payroll amount for employees engaged in employment within the purview of the Act; and

(5) Employer's accident record as shown in the application and the Office's records.

(d) If an employer believes that the Branch incorrectly denied its application to self-insure, or that a lesser security deposit would fully secure its LHWCA obligations, the employer may request a hearing before the Director of the Division of Longshore and Harbor Workers' Compensation (Longshore Director) or the Longshore Director's representative. Requests for hearing must be in writing and sent to the Branch within ten days of the date of the Branch's decision. The employer may submit new evidence and/or argument in support of its challenge to the Branch's decision and must provide any additional documentation OWCP requests. The Longshore Director or his representative will notify the employer of the hearing date within 10 days of receiving the request. The Longshore Director or his representative will issue the final agency decision on the application within 60 days of the hearing date, or, where evidence is submitted after the hearing, within 60 days of the receipt of such evidence, but no later than 180 days after receiving the employer's request for a hearing.

§ 703.304 Filing of Agreement and Undertaking; deposit of security.

Within 45 days of the date on which the employer receives the Branch's decision (or, if the employer requests a hearing, a period set by the Longshore Director or the Longshore Director's representative) granting its application to self-insure and fixing the required security deposit amount (*see* § 703.303), the employer must:

(a) Execute and file with the Branch an Agreement and Undertaking, in a form prescribed and provided by OWCP in which the employer shall agree to:

(1) Pay when due, as required by the provisions of the Act, all compensation payable on account of injury or death of any of its employees injured within the purview of the Act;

(2) Furnish medical, surgical, hospital, and other attendance, treatment and care as required by the Act;

(3) Deposit with the Branch indemnity bonds or letters of credit in the amount fixed by the Office, or deposit negotiable securities under §§ 703.306 and 703.307 in that amount;

(4) Authorize the Branch, at its discretion, to bring suit under any deposited indemnity bond or to draw upon any deposited letters of credit, as appropriate under the terms of the security instrument, or to collect the

interest and principal as they become due on any deposited negotiable securities and to seize and sell or otherwise liquidate such negotiable securities or any part thereof when the employer:

(i) Defaults on any of its LHWCA obligations;

(ii) Fails to renew any deposited letter of credit or substitute acceptable securities in its place;

(iii) Fails to renew any deposited negotiable securities at maturity or substitute acceptable securities in their place; or

(iv) Fails to comply with any of the terms of the Agreement and Undertaking;

(5) Authorize the Branch, at its discretion, to pay such compensation, medical, and other expenses and any accrued penalties imposed by law as it may find to be due and payable from the proceeds of the deposited security; and

(6) Obtain and maintain, if required by the Office, excess or catastrophic insurance in amounts to be determined by the Office.

(b) Give security in the amount fixed in the Office's decision:

(1) In the form of an indemnity bond with sureties satisfactory to the Office, and in such form and containing such provisions as the Office may prescribe: *Provided,* That only surety companies approved by the United States Treasury Department under the laws of the United States and the rules and regulations governing bonding companies may act as sureties on such indemnity bonds (see Department of Treasury's Circular—570);

(2) In the form of letters of credit issued by a financial institution satisfactory to the Branch and upon which the Branch may draw; or,

(3) By a deposit of negotiable securities with a Federal Reserve Bank or the Treasurer of the United States in compliance with §§ 703.306 and 703.307.

§ 703.305 [Reserved]

§ 703.306 Kinds of negotiable securities that may be deposited; conditions of deposit; acceptance of deposits.

A self-insurer or a self-insurer applicant electing to deposit negotiable securities to secure its obligations under the Act in the amount fixed by the Office under the regulations in this part shall deposit any negotiable securities acceptable as security for the deposit of public monies of the United States under regulations issued by the Secretary of the Treasury. (*See* 31 CFR part 225.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 703.307 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; interest thereon.

Deposits of negotiable securities provided for by the regulations in this part shall be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Office, or the Treasurer of the United States, and shall be held subject to the order of the Office. The Office may, however, authorize the self-insurer to collect interest on the securities deposited by it.

§ 703.308 Substitution and withdrawal of indemnity bond, letters of credit or negotiable securities.

(a) No substitution or withdrawal of an indemnity bond, letters of credit or negotiable securities deposited by a self-insurer under the regulations in this part shall be made except when authorized by the Office. A self-insurer discontinuing business, discontinuing operations within the purview of the Act, or securing the payment of compensation by commercial insurance under the provisions of the Act may apply to the Office for the withdrawal of the security it provided under the regulations in this part. The self-insurer must file with its application a sworn statement setting forth—

(1) A list of all cases in each compensation district in which the self-insurer is paying compensation, together with the names of the employees and other beneficiaries, a description of causes of injury or death, and a statement of the amount of compensation paid;

(2) A similar list of all pending cases in which the self-insurer has not yet paid compensation; and

(3) A similar list of all cases in which injury or death has occurred within one year before such application or in which the last payment of compensation was made within one year before such application.

(b) The Office may authorize withdrawal of previously-deposited indemnity bonds, letters of credit and negotiable securities that, in the opinion of the Office, are not necessary to provide adequate security for the payment of the self-insurer's outstanding and potential LHWCA obligations. No withdrawals will be authorized unless there has been no claim activity involving the self-insurer for a minimum of five years, and the Office is reasonably certain no further claims will arise.

§ 703.309 Increase or reduction in the amount of indemnity bond, letters of credit or negotiable securities.

(a) Whenever the Office considers the principal sum of the indemnity bond or letters of credit filed or the amount of the negotiable securities deposited by a self-insurer insufficient to fully secure the self-insurer's LHWCA obligations, the self-insurer must, upon demand by the Office, deposit additional security in accordance with the regulations in this part in an amount fixed by the Branch. The Branch will issue its decision requiring additional security in accordance with § 703.303, and the procedures set forth at §§ 703.303(d) and 703.304 for requesting a hearing and complying with the Office's decision will apply as appropriate.

(b) The Office may reduce the required security at any time on its own initiative, or upon application of a self-insurer, when in the Office's opinion the facts warrant a reduction. A self-insurer seeking a reduction must furnish any information the Office requests regarding its current affairs, the nature and hazard of the work of its employees, the amount of its payroll for employees engaged in maritime employment within the purview of the Act, its financial condition, its accident experience, a record of compensation payments it has made, and any other evidence the Branch considers necessary.

§ 703.310 Authority to seize security deposit; use and/or return of proceeds.

(a) The Office may take any of the actions set forth in paragraph (b) of this section when a self-insurer—

(1) Defaults on any of its LHWCA obligations;

(2) Fails to renew any deposited letter of credit or substitute acceptable securities in its place;

(3) Fails to renew any deposited negotiable securities at maturity or substitute acceptable securities in their place; or

(4) Fails to comply with any of the terms of the Agreement and Undertaking.

(b) When any of the conditions set forth in paragraph (a) of this section occur, the Office may, within its discretion and as appropriate to the security instrument—

(1) Bring suit under any indemnity bond;

(2) Draw upon any letters of credit;

(3) Seize any negotiable securities, collect the interest and principal as they may become due, and sell or otherwise liquidate the negotiable securities or any part thereof.

(c) When the Office, within its discretion, determines that it no longer

needs to collect the interest and principal of any negotiable securities seized pursuant to paragraphs (a) and (b) of this section, or to retain the proceeds of their sale, it must return any of the employer's negotiable securities still in its possession and any remaining proceeds of their sale.

§ 703.311 Required reports; examination of self-insurer accounts.

(a) Upon the Office's request, each self-insurer must submit the following reports:

(1) A certified financial statement of the self-insurer's assets and liabilities, or a balance sheet.

(2) A sworn statement showing by classifications the payroll of employees of the self-insurer who are engaged in employment within the purview of the LHWCA or any of its extensions.

(3) A sworn statement covering the six-month period preceding the date of such report, listing by compensation districts all death and injury cases which have occurred during such period, together with a report of the status of all outstanding claims showing the particulars of each case.

(b) Whenever it considers necessary, the Office may inspect or examine a self-insurer's books of account, records, and other papers to verify any financial statement or other information the self-insurer furnished to the Office in any report required by this section, or any other section of the regulations in this part. The self-insurer must permit the Office or its duly authorized representative to make the inspection or examination. Alternatively, the Office may accept an adequate report of a certified public accountant.

§ 703.312 Period of authorization as self-insurer.

(a) Self-insurance authorizations will remain in effect for so long as the self-insurer complies with the requirements of the Act, the regulations in this part, and OWCP.

(b) A self-insurer who has secured its liability by depositing an indemnity bond with the Office will, on or about May 10 of each year, receive from the Office a form for executing a bond that will continue its self-insurance authorization. The submission of such bond, duly executed in the amount indicated by the Office, will be deemed a condition of the continuing authorization.

§ 703.313 Revocation of authorization to self-insure.

The Office may for good cause shown suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or communication of the Office, or the failure or insolvency of the surety on its indemnity bond, or impairment of financial responsibility of such self-insurer, shall be deemed good cause for suspension or revocation.

Signed in Washington, DC, this 5th day of March, 2004.

Victoria Lipnic,

Assistant Secretary for Employment Standards.

[FR Doc. 04–5631 Filed 3–12–04; 8:45 am]

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Federal Register

Monday,
March 15, 2004

Part IV

Department of Education

34 CFR Part 222
Impact Aid Programs; Final Rule

Office of Elementary and Secondary Education; Overview Information; Impact Aid Discretionary Construction Program; Notice Inviting Applications for New Awards for Fiscal Years (FYs) 2003 and 2004; Notice

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AA96

Impact Aid Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary issues these final regulations to implement the Impact Aid Discretionary Construction program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (NCLB). The program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid formula funds. These final regulations incorporate statutory requirements and provide guidance for applying and qualifying for, as well as spending, the Federal funds provided under this program. These final regulations apply to the grant competitions after fiscal year (FY) 2002.

EFFECTIVE DATE: April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn Hall, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6244. Telephone: (202) 260–3858 or via Internet: *Impact.Aid@ed.gov*.

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: These final regulations implement the Impact Aid Discretionary Construction program, which is authorized under section 8007(b) of the Act, as amended by the NCLB (Pub. L. 107–110, enacted January 8, 2002). Final regulations for the FY 2002 grant competition were published in the **Federal Register** on August 16, 2002.

On October 22, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (68 FR 60598). The NPRM was similar to the final FY 2002 regulations, but we included clarifying language based on our experiences in implementing this program. These clarifications were made in §§ 222.172, 222.173, and 222.176 of title 34 of the Code of Federal Regulations.

The purpose of the Impact Aid Discretionary Construction program is to assist certain eligible Impact Aid school districts in meeting the emergency or modernization needs of their school facilities. In the preamble to the NPRM, the Secretary summarized and discussed on pages 60598 and 60599 the substantive issues under the sections of the regulations to which they pertain.

These final regulations reflect one change from the NPRM, resulting from public comments. Section 222.192 is amended to specify that when assessing a grant recipient's available resources for capital improvements, the Secretary will not consider funds associated with legally binding written commitments in a district's capital fund that have been obligated but not yet liquidated.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. An analysis of the comments and of the change in the regulations since publication of the NPRM follows. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Available Local Funds (Section 222.192)

Comment: One commenter recommended that we amend the regulations to allow the Secretary, when assessing a potential grantee's available capital resources, to review revised annual audit reports or other written proof of binding obligations that the grantee has made but not yet paid for.

Discussion: Prior to making final funding decisions and determining final grant awards, the Secretary may verify certain data with applicants' States and will also assess available resources for all highly ranked grantees, limitations on the grant awards for certain grantee categories, and the availability of in-kind contributions. The Secretary considers as available to fund the project the closing capital fund balance identified in the LEA's audited financial report for the prior year, not including $100,000 or ten percent of the average annual capital expenditures of the applicant for the three previous fiscal years, whichever is greater. We agree that the regulations and the program implementation would be improved with the change recommended by the commenter. We also believe that the benefits of this provision to the few cases to which it would apply justify the minimal costs to the applicants required to submit the documents that would be associated with this addition.

Change: The Secretary will also exclude from consideration capital funds that a grantee can show have been committed by a written binding agreement but have not yet been paid from the grantee's capital fund. We have amended § 222.192 to reflect this revision.

Permissible Uses of Funds (Section 222.172)

Comment: One commenter expressed a concern that § 222.172 would prohibit any grants to LEAs that do not hold title to a school facility. In the commenter's State, LEAs often have exclusive use through ground leases of a school facility located on Indian lands.

Discussion: The regulations provide that an LEA may receive emergency or modernization grants for repairs or renovations to a facility in which it has an interest, including a leasehold interest. Accordingly, LEAs leasing space on Indian lands for their schools would be eligible to receive these types of grants, but as noted in § 222.172(c), we would not allow a grant to completely replace a school (new construction) for which the applicant does not hold title. We do not believe a change to the regulations is necessary.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the heading Paperwork Reduction Act of

1995. We include additional discussion of potential costs and benefits in the section of this preamble titled Analysis of Comments and Changes.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small LEAs receiving Federal funds under this program. However, in the FY 2002 grant competition, fewer than 40 applications that were eligible to be evaluated by field readers were submitted by small entities. In addition, we do not believe that the regulations have a significant economic impact on the limited number of small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations benefit both small and large entities in that they clarify confusing and complex statutory requirements. Also, since the statute requires Impact Aid school districts to apply if they wish to receive these discretionary funds, the Department is not able to award these funds without the specified application information. The application process will ensure that districts do not provide significant amounts of information that is already available to the Department from annual Impact Aid formula grant applications.

In addition, electronic applications will be available for the competition to award FY 2004 funds, which will further minimize burden to all applicants. The software will populate certain application data fields for applicants that submitted an Impact Aid section 8003 application for FY 2004, and will have built-in checks for completion of all necessary items. This software will reduce the burden on applicants of organizing and entering data that were already submitted to the Impact Aid Program, will help applicants determine whether their LEAs meet the program's eligibility requirements, and will reduce the number of errors in applications. Also, whenever possible, certain fiscal data are collected from State agencies, which are not defined as "small entities" in the Regulatory Flexibility Act.

The Secretary specifically invited comment in the NPRM on the effects of the proposed regulations on small entities but we received no comments on that topic. The regulations impose minimal paperwork burden requirements for all applicants and minimal requirements with which the grant recipients must comply.

Paperwork Reduction Act of 1995

Sections 222.183, 222.184, 222.185, and 222.186 contain information collection requirements. The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number 84.041C Impact Aid Discretionary Construction Program.)

List of Subjects in 34 CFR Part 222

Education, Education of children with disabilities, Educational facilities, Elementary and secondary education, Federally affected areas, Grant programs-education, Indians-education, Public housing, Reporting and recordkeeping requirements, School construction, Schools.

Dated: March 9, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising subpart L of part 222 to read as follows:

PART 222—IMPACT AID PROGRAMS

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

■ 2. Revise subpart L of part 222 to read as follows:

Subpart L—Impact Aid Discretionary Construction Grant Program Under Section 8007(b) of the Act

General

Sec.

Eligibility

How To Apply for a Grant

Subpart L—Impact Aid Discretionary Construction Grant Program Under Section 8007(b) of the Act

General

§ 222.170 What is the purpose of the Impact Aid Discretionary Construction grant program (Section 8007(b) of the Act)?

The Impact Aid Discretionary Construction grant program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive formula Impact Aid funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.171 What LEAs may be eligible for Discretionary Construction grants?

(a) Applications for these grants are considered in four funding priority categories. The specific requirements for each priority are detailed in §§ 222.177 through 222.182.

(b)(1) Generally, to be eligible for an emergency construction grant, an LEA must—

(i) Enroll a high proportion (at least 40 percent) of federally connected children in average daily attendance (ADA) who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services;

(ii) Have a school that enrolls a high proportion of one of these types of students;

(iii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act; or

(iv) Meet the specific numeric requirements regarding bonding capacity.

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of the emergency.

(c)(1) Generally, to be eligible for a modernization construction grant, an LEA must—

(i) Be eligible for Impact Aid funding under either section 8002 or 8003 of the Act;

(ii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act;

(iii) Enroll a high proportion (at least 40 percent) of federally connected children in ADA who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services;

(iv) Have a school that enrolls a high proportion of one of these types of students; or

(v) Meet the specific numeric requirements regarding bonding capacity.

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of its need for modernization funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.172 What activities may an LEA conduct with funds received under this program?

(a) An LEA may use emergency grant funds received under this program only to repair, renovate, alter, and, in the limited circumstances described in paragraph (c) of this section, replace a public elementary or secondary school facility used for free public education to ensure the health and safety of students and personnel, including providing accessibility for the disabled as part of a larger project.

(b) An LEA may use modernization grant funds received under this program only to renovate, alter, retrofit, extend, and, in the limited circumstances described in paragraph (c) of this section, replace a public elementary or secondary school facility used for free public education to provide school facilities that support a contemporary educational program for the LEA's students at normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

(c)(1) An emergency or modernization grant under this program may be used for the construction of a new school facility but only if the Secretary determines—

(i) That the LEA holds title to the existing facility for which funding is requested; and

(ii) In consultation with the grantee, that partial or complete replacement of the facility would be less expensive or more cost-effective than improving the existing facility.

(2) When construction of a new school facility is permitted, emergency and modernization funds may be used only for a new school facility that is used for free public education. These funds may be used for the—

(i) Construction of instructional, resource, food service, and general or administrative support areas, so long as they are a part of the instructional facility; and

(ii) Purchase of initial equipment or machinery, and initial utility connections.

(Authority: 20 U.S.C. 7707(b))

§ 222.173 What activities will not receive funding under a Discretionary Construction grant?

The Secretary does not fund the following activities under a Discretionary Construction grant:

(a) Improvements to facilities for which the LEA does not have full title or other interest, such as a lease-hold interest.

(b) Improvements to or repairs of school grounds, such as environmental remediation, traffic remediation, and landscaping, that do not directly involve instructional facilities.

(c) Repair, renovation, alteration, or construction for stadiums or other facilities that are primarily used for athletic contests, exhibitions, and other events for which admission is charged to the general public.

(d) Improvements to or repairs of teacher housing.

(e) Except in the limited circumstances as provided in § 222.172(c), when new construction is permissible, acquisition of any interest in real property.

(f) Maintenance costs associated with any of an LEA's school facilities.

(Authority: 20 U.S.C. 7707(b))

§ 222.174 What prohibitions apply to these funds?

Grant funds under this program may not be used to supplant or replace other available non-Federal construction money. These grant funds may be used for emergency or modernization activities only to the extent that they supplement the amount of construction funds that would, in the absence of these grant funds, be available to a grantee from non-Federal funds for these purposes.

Example 1. "Supplanting." An LEA signs a contract for a $300,000 roof replacement and plans to use its capital expenditure fund to pay for the renovation. Since the LEA already has non-Federal funds available for the roof project, it may not now use a grant from this program to pay for the project or replace its own funds in order to conserve its capital fund.

Example 2. "Non-supplanting." The LEA from the example of supplanting that has the $300,000 roof commitment has also received a $400,000 estimate for the replacement of its facility's heating, ventilation, and air conditioning (HVAC) system. The LEA has not made any commitments for the HVAC system because it has no remaining funds available to pay for that work. Since other funds are not available, it would not be supplanting if the LEA received an emergency grant under this program to pay for the HVAC system.

(Authority: 20 U.S.C. 7707(b))

§ 222.175 What regulations apply to recipients of funds under this program?

The following regulations apply to the Impact Aid Discretionary Construction program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) except for 34 CFR §§ 75.600 through 75.617.

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(b) The regulations in 34 CFR part 222.

(Authority: 20 U.S.C. 1221e–3)

§ 222.176 What definitions apply to this program?

(a) In addition to the terms referenced in 34 CFR 222.2, the following definitions apply to this program:

Bond limit means the cap or limit that a State may impose on an LEA's capacity for bonded indebtedness. For applicants in States that place no limit on an LEA's capacity for bonded indebtedness, the Secretary shall consider the LEA's bond limit to be 10 percent of its total assessed valuation.

Construction means

(1) Preparing drawings and specifications for school facilities;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities as described in § 222.172(b);

(4) Erecting or building school facilities, as described in § 222.172(c); and

(5) Inspections or supervision related to school facilities projects.

Emergency means a school facility condition that is so injurious or hazardous that it either poses an immediate threat to the health and safety of the facility's students and staff or can be reasonably expected to pose such a threat in the near future. These conditions can include deficiencies in the following building features: a roof; electrical wiring; a plumbing or sewage system; heating, ventilation, or air conditioning; the need to bring a school facility into compliance with fire and safety codes, or providing accessibility for the disabled as part of a larger project.

Level of bonded indebtedness means the amount of long-term debt issued by an LEA divided by the LEA's bonding capacity.

Minimal capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is at least $25,000,000 but not more than $50,000,000.

Modernization means the repair, renovation, alteration, or extension of a public elementary or secondary school facility in order to support a contemporary educational program for an LEA's students in normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

No practical capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is less than $25,000,000.

School facility means a building used to provide free public education, including instructional, resource, food service, and general or administrative support areas, so long as they are a part of the facility.

Total assessed value per student means the assessed valuation of real property per pupil (AVPP), unless otherwise defined by an LEA's State.

(b) The following terms used in this subpart are defined or referenced in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Equipment
Fiscal year
Grant
Grantee
Project
Public
Real property
Recipient

(Authority: 20 U.S.C. 7707(b) and 1221e–3)

Eligibility

§ 222.177 What eligibility requirements must an LEA meet to apply for an emergency grant under the first priority?

An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.178 What eligibility requirements must an LEA meet to apply for an emergency grant under the second priority?

Except as provided in § 222.179, an LEA is eligible to apply for an emergency grant under the second priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;

(b)(1) Enrolls federally connected children living on Indian lands equal to at least 40 percent of the total number of children in average daily attendance (ADA) in its schools; or

(2) Enrolls federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(c) Has used at least 75 percent of its bond limit;

(d) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(e) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.179 Under what circumstances may an ineligible LEA apply on behalf of a school for an emergency grant under the second priority?

An LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the other eligibility criteria described in § 222.178(a) or (b) may apply on behalf of a school located within its geographic boundaries for an emergency grant under the second priority of section 8007(b) of the Act if—

(a) The school—

(1) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The school has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel;

(c) The LEA has used at least 75 percent of its bond limit; and

(d) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

(Authority: 20 U.S.C. 7707(b))

§ 222.180 What eligibility requirements must an LEA meet to apply for a modernization grant under the third priority?

An LEA is eligible to apply for a modernization grant under the third priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8002 or 8003(b) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and

(c) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.181 What eligibility requirements must an LEA meet to apply for a modernization grant under the fourth priority?

An LEA is eligible to apply for a modernization grant under the fourth priority of section 8007(b) of the Act if it—

(a)(1) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act; and

(i) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA in its schools; or

(ii) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools; or

(2) Is eligible to receive assistance for the fiscal year under section 8002 of the Act;

(b) Has used at least 75 percent of its bond limit;

(c) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(d) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.182 Under what circumstances may an ineligible LEA apply on behalf of a school for a modernization grant under the fourth priority?

An LEA that is eligible to receive a payment under Title VIII for the fiscal year but that does not meet the other eligibility criteria described in § 222.181 may apply on behalf of a school located within its geographic boundaries for a modernization grant under the fourth priority of section 8007(b) of the Act if—

(a) The school—

(1) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The LEA has used at least 75 percent of its bond limit;

(c) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(d) The school has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

How To Apply for a Grant

§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit more than one application in a fiscal year. An LEA must submit a separate application for each school for which it proposes a project, and may submit more than one application for a single school if multiple projects are proposed.

Examples: 1. An LEA wants to receive both an emergency and a modernization grant for one school that has a failing roof and that also needs significant classroom modernization. The LEA would submit an emergency repair grant application to address the roof issues and a separate modernization application to request funds to renovate classroom space.

2. An LEA has five schools and seeks emergency grants to replace a roof and a boiler in one school and to replace windows in a second school. It should submit two applications—one for each of the two school facilities.

3. An LEA has one school that has several conditions that need to be corrected—a failing roof, aging windows that impair the efficiency of the heating system, and asbestos in floor tiles. The LEA may submit a single application for all of these conditions or separate emergency repair grant applications for each condition, if the LEA judges that they present varying degrees of urgency.

(b) An application must—

(1) Contain the information required in §§ 222.184 through 222.186, as applicable, and in any application notice that the Secretary may publish in the **Federal Register**; and

(2) Be timely filed in accordance with the provisions of the Secretary's application notice.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.184 What information must an application contain?

An application for an emergency or modernization grant must contain the following information:

(a) The name of the school facility the LEA is proposing to repair, construct, or modernize.

(b)(1) For an applicant under section 8003(b) of the Act, the number of federally connected children described in section 8003(a)(1) enrolled in the school facility, as well as the total enrollment in the facility, for which the LEA is seeking a grant; or

(2) For an applicant under section 8002 of the Act, the total enrollment, for the preceding year, in the LEA and in the school facility for which the LEA is seeking a grant, based on the fall State count date.

(c) The identification of the LEA's interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.

(d) The original construction date of the school facility that the LEA proposes to renovate or modernize.

(e) The dates of any major renovations of that school facility and the areas of the school covered by the renovations.

(f) The proportion of Federal acreage within the geographic boundaries of the LEA.

(g) Fiscal data including the LEA's—

(1) Maximum bonding capacity;

(2) Amount of bonded debt;

(3) Total assessed value of real property available to be taxed for school purposes;

(4) State average assessed value per pupil of real property available to be taxed for school purposes;

(5) Local real property tax levy, in mills or dollars, used to generate funds for capital expenditures; and

(6) Sources and amounts of funds available for the proposed project.

(h) A description of the need for funds and the proposed project for which a grant under this subpart L would be used, including a cost estimate for the project.

(i) Applicable assurances and certifications identified in the approved grant application package.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.185 What additional information must be included in an emergency grant application?

In addition to the information specified in § 222.184, an application for an emergency grant must contain the following:

(a) A description of the deficiency that poses a health or safety hazard to occupants of the facility.

(b) A description of how the deficiency adversely affects the occupants and how it will be repaired.

(c) A statement signed by an appropriate local official, as defined below, that the deficiency threatens the health and safety of occupants of the facility or prevents the use of the facility. An appropriate local official may include a local building inspector, a licensed architect, or a licensed structural engineer. An appropriate local official may not include a member of the applicant LEA's staff.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.186 What additional information must be included in a modernization grant application?

In addition to the information specified in § 222.184, an application for a modernization grant must contain a description of—

(a) The need for modernization; and

(b) How the applicant will use funds received under this program to address the need referenced in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.187 Which year's data must an SEA or LEA provide?

(a) Except as provided in paragraph (b) of this section, the Secretary will determine eligibility under this discretionary program based on student and fiscal data for each LEA from the fiscal year preceding the fiscal year for which the applicant is applying for funds.

(b) If satisfactory fiscal data are not available from the preceding fiscal year, the Secretary will use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

(Authority: 20 U.S.C. 7707(b))

How Grants Are Made

§ 222.188 What priorities may the Secretary establish?

In any given year, the Secretary may assign extra weight for certain facilities systems or emergency and modernization conditions by identifying the systems or conditions and their assigned weights in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7707(b))

§ 222.189 What funding priority does the Secretary give to applications?

(a) Except as provided in paragraph (b) of this section, the Secretary gives funding priority to applications in the following order:

(1) First priority is given to applications described under § 222.177 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(2) After all eligible first-priority applications are funded, second priority is given to applications described under §§ 222.178 and 222.179 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(3) Third priority is given to applications described under § 222.180 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(4) Fourth priority is given to applications described under §§ 222.181 and 222.182 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(b)(1) The Secretary makes awards in each priority described above until the Secretary is unable to make an approvable award in that priority.

(2) If the Secretary is unable to fund a full project or a viable portion of a project, the Secretary may continue to fund down the list of high-ranking applicants within a priority.

(3) The Secretary applies any remaining funds to awards in the next priority.

(4) If an applicant does not receive an emergency or modernization grant in a fiscal year, the Secretary will, subject to the availability of funds and to the priority and award criteria, consider that application in the following year along with the next fiscal year's pool of applications.

Example: The first five applicants in priority one have been funded. Three hundred thousand dollars remain available. Three unfunded applications remain in that priority. Application #6 requires a minimum of $500,000, application #7 requires $400,000, and application #8 requires $300,000 for a new roof and $150,000 for related wall and ceiling repairs. Applicant #8 agrees to accept the remaining $300,000 since the roof upgrade can be separated into a viable portion of applicant #8's total project. Applications #6 and #7 will be retained for consideration in the next fiscal year and will compete again with that fiscal year's pool of applicants. Applicant #8 will have to submit a new application in the next fiscal year if it wishes to be considered for the unfunded portion of the current year's application.

(Authority: 20 U.S.C. 7707(b))

§ 222.190 How does the Secretary rank and select applicants?

(a) To the extent that they are consistent with these regulations and section 8007(b) of the Act, the Secretary will follow grant selection procedures that are specified in 34 CFR 75.215

through 75.222. In general these procedures are based on the authorizing statute, the selection criteria, and any priorities or other applicable requirements that have been published in the **Federal Register**.

(b) In the event of ties in numeric ranking, the Secretary may consider as tie-breaking factors: the severity of the emergency or the need for modernization; for applicants under section 8003 of the Act, the numbers of federally connected children who will benefit from the project; or for applicants under section 8002 of the Act, the numbers of children who will benefit from the project; the AVPP compared to the LEA's State average; and available resources or non-Federal funds available for the grant project.

(Authority: 20 U.S.C. 7707(b))

§ 222.191 What is the maximum award amount?

(a) Subject to any applicable contribution requirements as described in §§ 222.192 and 222.193, the procedures in 34 CFR 75.231 through 75.236, and the provisions in paragraph (b) of this section, the Secretary may fund up to 100 percent of the allowable costs in an approved grantee's proposed project.

(b) An award amount may not exceed the difference between—

(1) The cost of the proposed project; and

(2) The amount the grantee has available or will have available for this purpose from other sources, including local, State, and other Federal funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.192 What local funds may be considered as available for this project?

To determine the amount of local funds that an LEA has available under § 222.191(b)(2) for a project under this program, the Secretary will consider as available all LEA funds that may be used for capital expenditures except $100,000 or 10 percent of the average annual capital expenditures of the applicant for the three previous fiscal years, whichever is greater. The Secretary will not consider capital funds that an LEA can demonstrate have been committed through signed contracts or other written binding agreements but have not yet been expended.

(Authority: 20 U.S.C. 7707(b))

§ 222.193 What other limitations on grant amounts apply?

(a) Except as provided in paragraph (b) of this section and § 222.191, the amount of funds provided under an emergency grant or a modernization grant awarded to an eligible LEA is subject to the following limitations:

(1) The award amount may not be more than 50 percent of the total cost of an approved project.

(2) The total amount of grant funds may not exceed four million dollars during any four-year period.

Example: An LEA that is awarded four million dollars in the first year may not receive any additional funds for the following three years.

(b) Emergency or modernization grants to LEAs with no practical capacity to issue bonds as defined in § 222.176 are not subject to the award limitations described in paragraph (a) of this section.

(Authority: 20 U.S.C. 7707(b))

§ 222.194 Are "in-kind" contributions permissible?

(a) LEAs that are subject to the applicable matching requirement described in § 222.193(a) may use allowable third party in-kind contributions as defined below to meet the requirements.

(b) Third party in-kind contributions mean property or services that benefit this grant program and are contributed by non-Federal third parties without charge to the grantee or by a cost-type contractor under the grant agreement.

(c) Subject to the limitations of 34 CFR 75.564(c)(2) regarding indirect costs, the provisions of 34 CFR 80.24 govern the allowability and valuation of in-kind contributions, except that it is permissible for a third party to contribute real property to a grantee for a project under this program, so long as no Federal funds are spent for the acquisition of real property.

(Authority: 20 U.S.C. 7707(b))

Conditions and Requirements Grantees Must Meet

§ 222.195 How does the Secretary make funds available to grantees?

The Secretary makes funds available to a grantee during a project period using the following procedure:

(a) Upon final approval of the grant proposal, the Secretary authorizes a project period of up to 60 months based upon the nature of the grant proposal and the time needed to complete the project.

(b) The Secretary then initially makes available to the grantee 10 percent of the total award amount.

(c) After the grantee submits a copy of the emergency or modernization contract approved by the grantee's governing board, the Secretary makes available 80 percent of the total award amount to a grantee.

(d) The Secretary makes available up to the remaining 10 percent of the total award amount to the grantee after the grantee submits a statement that—

(1) Details any earnings, savings, or interest;

(2) Certifies that—

(i) The project is fully completed; and

(ii) All the awarded funds have been spent for grant purposes; and

(3) Is signed by the—

(i) Chairperson of the governing board;

(ii) Superintendent of schools; and

(iii) Architect of the project.

(Authority: 20 U.S.C. 7707(b))

§ 222.196 What additional construction and legal requirements apply?

(a) Except as provided in paragraph (b) of this section, a grantee under this program must comply with—

(1) The general construction legal requirements identified in the grant application assurances;

(2) The prevailing wage standards in the grantee's locality that are established by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*); and

(3) All relevant Federal, State, and local environmental laws and regulations.

(b) A grantee that qualifies for a grant because it enrolls a high proportion of federally connected children who reside on Indian lands is considered to receive a grant award primarily for the benefit of Indians and must therefore comply with the Indian preference requirements of section 7(b) of the Indian Self-Determination Act.

(Authority: 20 U.S.C. 7707(b) and 1221e–3)

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Impact Aid Discretionary Construction Program; Notice Inviting Applications for New Awards for Fiscal Years (FYs) 2003 and 2004

Catalogue of Federal Domestic Assistance (CFDA) Number: 84.041C.

Note: This notice includes deadline dates and funding information for this program for competitions using FY 2003 and FY 2004 funds.

Dates: For key dates for the FY 2003 and FY 2004 competitions for this program, see the chart in the Award Information section of this notice.

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Eligible Applicants: (A) *Emergency Grants.* To be eligible for an emergency grant, a local educational agency (LEA) must enroll a high percentage (at least 40 percent) of federally connected children who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services, have a school that enrolls a high percentage of one of these types of students, or be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (NCLB). In making emergency grant awards, the Secretary must also consider the LEA's total assessed value of real property that may be taxed for school purposes, its use of available bonding capacity, and the nature and severity of the school facility emergency.

(B) *Modernization Grants.* To be eligible for a modernization grant, an LEA must be eligible for Impact Aid funding in general; be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act; enroll a high percentage (at least 40 percent) of federally connected children who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services; have a school that enrolls a high percentage of one of these types of students; or be eligible for funding under section 8002 of the Act (payments for Federal property). In making awards, the Secretary must also consider an LEA's total assessed value of real property that may be taxed for school purposes, its use of its available bonding capacity, and the nature and severity of its need for modernization funds.

Applications are considered in four priority categories. Emergency grants are considered for the first and second priorities and Modernization grants are considered for the third and fourth priorities. Detailed information about the eligibility requirements for each priority can be found in 34 CFR 222.177 through 222.182.

Estimated Available Funds: See chart.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice.

Project Period: We will determine each project period based on the project proposed, and will specify this period in the grant award document.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Impact Aid Discretionary Construction Program provides grants to eligible Impact Aid school districts to assist in addressing their school facility emergency and modernization needs. The eligible Impact Aid school districts have a limited ability to raise revenues for capital improvements because they have large areas of Federal land within their boundaries. As a result, these districts find it difficult to respond when their school facilities are in need of emergency repairs or modernization.

Program Authority: 20 U.S.C. 7707(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for 34 CFR 75.600 through 75.617), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 222, as published elsewhere in this issue of the **Federal Register**. These program regulations will take effect prior to the deadline for transmittal of applications for the FY 2003 competition.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: See chart.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice.

Project Period: We will determine each project period based on the project proposed, and will specify this period in the grant award document.

IMPACT AID DISCRETIONARY CONSTRUCTION PROGRAM—CFDA 84.041C APPLICATION NOTICE FOR COMPETITIONS USING FISCAL YEARS 2003 AND 2004 FUNDS

Funds fiscal year	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated award date	Estimated available funds	Estimated range of awards	Estimated number of awards	Estimated average award
FY 2003	3/12/2004	4/23/2004	6/22/2004	7/16/2004	$26,810,000	$50,000–5,000,000	20	$1,300,000
FY 2004	5/24/2004	7/16/2004	9/14/2004	10/22/2004	26,666,534	$50,000–5,000,000	20	1,300,000

III. Eligibility Information

1. *Eligible Applicants:* (A) *Emergency Grants.* To be eligible for an emergency grant, an LEA must enroll a high percentage (at least 40 percent) of federally connected children who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services, have a school that enrolls a high percentage of one of these types of students, or be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act, as amended by the NCLB. In making emergency grant awards, the Secretary must also consider the LEA's total assessed value of real property that may be taxed for school purposes, its use of available bonding capacity, and the nature and severity of the school facility emergency.

(B) *Modernization Grants.* To be eligible for a modernization grant, an LEA must be eligible for Impact Aid funding in general; be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act; enroll a high percentage (at least 40 percent) of federally connected children who reside on Indian lands or who have a parent on active duty in the U.S. uniformed services; have a school that enrolls a high percentage of one of these types of students; or be eligible for funding under section 8002 of the Act (payments for Federal property). In making awards, the Secretary must also consider an LEA's total assessed value of real property that may be taxed for school purposes, its use of its available bonding capacity, and the nature and severity of its need for modernization funds.

Applications are considered in four priority categories. Emergency grants are considered for the first and second priorities and Modernization grants are considered for the third and fourth priorities. Detailed information about the eligibility requirements for each priority can be found in 34 CFR 222.177 through 222.182.

2. *Cost Sharing or Matching: See* 20 U.S.C. 7707(b) and 34 CFR 222.191 through 222.193.

IV. Application and Submission Information

1. *Address to Request Application Package:* Marilyn Hall, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E103, Washington, DC 20202–6244. Telephone: (202) 260–3858. You can also download the FY 2003 application forms at: *www.ed.gov/programs/8007b/applicant.* An electronic application will be available for the FY 2004 competition for these grants at: *http://e-grants.ed.gov.*

See the chart in the Award Information section of this notice for the date of availability for FY 2004 electronic and paper application.

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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application packages for this program.

Page Limit: We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read. We strongly recommend that applicants limit their response in each applicable narrative section to two pages.

Content Restrictions: The application narrative may include information on the scale of the project in relation to the size of the school facility. Applications should not include drawings, designs, or other extraneous documents regarding proposed projects, because reviewers will not consider them.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application packages for this program. The application packages also specify the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application packages for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 222.173 and 222.174. Grant recipients must, in accordance with Federal, State and local laws, use emergency or modernization grants for permissible construction activities at public elementary and secondary school facilities. The scope of a selected facilities project will be identified as part of the final grant award conditions. A grantee must also ensure that its construction expenditures under this program meet the requirements of 34 CFR 222.172 (allowable program activities) and 34 CFR 222.173 through 222.174 (prohibited activities). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application packages for this program.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications:

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Impact Aid Discretionary Construction Program—CFDA Number 84.041C—is one of the programs included in the pilot project. If you are an applicant under the FY 2004 Impact Aid Discretionary Construction Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application for the FY 2004 competition, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Discretionary Construction Program under Section 8007(b) and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an

identifying number unique to your application).

• Within three working days after submitting your electronic application, mail a signed copy of the Application for Discretionary Construction Program under Section 8007(b) to the Impact Aid Program after following these steps:

1. Print the Application for Discretionary Construction Program under Section 8007(b) from e-Application.

2. The LEA's Authorized Representative must sign this form on the cover page and on all of the assurances pages. The local certifying official must sign the certification in an emergency application.

3. Place the PR/Award number in the upper right hand corner of the hard copy cover page of the Application for Discretionary Construction Program under Section 8007(b).

4. Mail the signed Application for Discretionary Construction Program under Section 8007(b) to the Impact Aid Program at the address listed in the For Further Information Contact section (see VII. Agency Contact). Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Impact Aid Discretionary Construction Program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this program; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Impact Aid Discretionary Construction Program at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* Consistent with 34 CFR 75.209, the selection criteria for this program are based on the specific statutory program elements for each Impact Aid Discretionary Construction Application identified in 34 CFR 222.183 through 222.187 and the approved application (OMB No. 1810–0657).

The Secretary gives distinct weight to the listed selection criteria. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally, unless otherwise specified. The maximum score that an application may receive is 100 points. In evaluating applications for grants under this program, the Secretary will use the following project selection criteria.

(1) *Need for project/severity of the school facility problem to be addressed by the proposed project (up to 30 points).*

Factors for Emergency grants:

(a) Justification that the proposed project will address a valid emergency; and consistency of the emergency description and the proposed project with the certifying local official's statement.

(b) Impact of the emergency condition on the health and safety of the building occupants or on program delivery (examples: the systems or areas of the facility involved, *e.g.*, HVAC, roof, floor, windows); the type of space affected, such as instructional, resource, food service, recreational, general support, or other areas; the percentage of building occupants affected by the emergency; and the importance of the facility or affected area to the instructional program.

Factors for Modernization grants:

(a) Justification that the proposed project is a valid modernization need (example: building capacity is 300 students; current enrollment is 350; three additional classrooms are needed to meet State capacity standards and 20-to-1 student/teacher ratio).

(b) Impact of the modernization challenges on building occupants or program delivery (examples: the percentage of building occupants adversely affected; the areas and extent of the facility affected (type of space affected, such as instructional, resource, food service, recreational, general support, or other areas); and the importance of the facility or affected space to the required instructional program).

(2) *Project Urgency (up to 28 points).*

Factors for Emergency grants:

(a) Risk to occupants if the facility condition is not addressed; projected increased future costs; effect of the proposed project on the useful life of the facility or the need for major construction; or age and condition of the facility and date of last renovation of affected areas.

(b) The justification for rebuilding, if proposed.

Factors for Modernization grants:

(a) Project urgency in fiscal terms (examples: proposed project will extend useful life of current facility on a cost-effective basis, or district can improve program quality with updated facility and delay replacement of facility).

(b) The justification for rebuilding, if proposed.

(3) *Effects of Federal Presence (up to 30 points total).*

For section 8003 districts:

(a) Amount of non-taxable Federal property in the applicant district (percentage of Federal property divided by 10) (up to 10 points);

(b) The numbers of federally connected children identified in sections 8003(a)(1)(A), (B), (C), and (D) of the Act in the district (percentage of identified children in district divided by 10) (up to 10 points);

(c) The numbers of federally connected children identified in sections 8003(a)(1)(A), (B), (C), and (D) of the Act in the school facility (percentage of identified children in school facility divided by 10) (up to 10 points); or

For section 8002 districts:

(a) The amount of non-taxable Federal property in the applicant district (percentage of Federal property divided by 10 and multiplied by 3) (up to 30 points);

(4) *Ability to respond or pay (up to 12 points total).*

(a) The percentage an LEA has used of its bonding capacity. Four points to be distributed based on the LEA's quartile so that an LEA that has used 100 percent of its bonding capacity receives all four points and an LEA that has used less than 25 percent of its bond limit receives only one point. LEAs that do not have limits on bonded indebtedness established by their States will be evaluated by assuming that their bond limit is 10 percent of the assessed value of real property in the LEA. LEAs deemed to have no practical capacity to issue bonds will receive all four points (up to 4 points).

(b) Assessed value of real property per student (applicant LEA's total assessed

valuation of real property per pupil as a percentile ranking of all LEAs in the State. Four points to be distributed by providing all four points to LEAs in the poorest quartile and only one point to LEAs in the wealthiest quartile) (up to 4 points).

(c) Total tax rate for capital or school purposes (applicant LEA's tax rate for capital or school purposes as a percentile ranking of all LEAs in the State. If the State authorizes a tax rate for capital expenditures, then these data must be used; otherwise, data on the total tax rate for school purposes are used. Four points to be distributed by providing all four points to LEAs in the highest taxing quartile and only one point to LEAs in the lowest quartile) (up to 4 points).

2. *Review and Selection Process:* Upon receipt, Impact Aid program staff will screen all applications to identify any that should not be included in the panel review process. Applications that do not meet the eligibility standards or are incomplete or late will be eliminated. Program staff will also calculate the objective scores for each application under criteria (3) and (4). Panel reviewers will assess the applications under criteria (1) and (2).

Except as provided in 34 CFR 222.190, all eligible applications in the "first priority" emergency category must be funded before applications in the next priority can be funded. The Secretary will not subject applications in the second, third, and fourth priorities to the panel review process if the need for funds in the first priority and the number of eligible applications received greatly exceeds the available appropriation. Likewise, if the numbers of applications and need for funds in the first and second priorities greatly exceed the available funds, the Secretary will not submit applications from the third and fourth priorities for a panel review. However, as prescribed in section 8007(b) of the Act and the implementing regulations, any unfunded application in any of the four priorities will be retained and considered along with the next fiscal year's pool of applicants.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally. ,

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and 34 CFR 222.195. In general, grantees must comply with applicable reporting requirements in 34 CFR parts 75 and 80. In addition, grantees will be required to provide periodic performance and financial reports, as specified in individual grant award conditions and 34 CFR 222.195.

4. *Performance Measures:* The Department has established the following performance measure for this program: an increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate. Data for this measure will be reported to the Department on Table 10 of the application for Impact Aid Section 8003 Basic Support Payments.

VII. Agency Contact

For Further Information Contact: Marilyn Hall, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E103, Washington, DC 20202–6244. Telephone: (202) 260–3858 or by e-mail: *Impact.Aid@ed.gov.*

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) by contacting the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

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Dated: March 9, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–5671 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
March 15, 2004

Part V

Department of Education

34 CFR Part 5b
Privacy Act Regulations; Final Rule
Privacy Act of 1974; System of Records; Notices

DEPARTMENT OF EDUCATION

34 CFR Part 5b

Privacy Act Regulations

AGENCY: Office of Management, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations implementing the Privacy Act of 1974. These regulations make technical changes under § 5b.11 exempt systems of the Privacy Act regulations. These final regulations change the numbering system for the exempt systems, change the system location for Personnel Security and Suitability Purposes, and delete the Suitability for Employment Records (18–11–0020) from the Department's inventory of systems of records.

DATES: These regulations are effective March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Chiquitta Thomas, Office of the Chief Information Officer, Regulatory Information Management Group, U.S. Department of Education, 400 Maryland Avenue, SW., room 4050, ROB3, Washington, DC 20202–4651. Telephone: (202) 708–9265.

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:

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only to revise the file designation numbers, list of systems exempted, and office name and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

These regulations involve procedural rights of individuals under the Privacy Act. Individuals are not considered to be "entities" under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 5b

Privacy.

Dated: March 9, 2004.

William J. Leidinger,

Assistant Secretary for Management and Chief Information Officer.

■ For the reasons discussed in the preamble, the Secretary amends part 5b of title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

§ 5b.11 [Amended]

■ 2. Section 5b.11 is amended by:

■ a. In the introductory text in paragraph (b), removing "(18–10–0001)" and adding, in its place "(18–10–01)" and removing "(18–10–0004)" and adding, in its place "(18–10–04)".

■ b. In the introductory text in paragraph (c)(1), removing "(18–10–0001)" and adding, in its place "(18–10–01)" and removing "(18–10–0004)" and adding, in its place "(18–10–04)".

■ c. In the introductory text in paragraph (c)(2), removing "(18–08–0002)" and adding, in its place "(18–08–01)".

■ d. In the introductory text in paragraph (d)(1), removing "(18–10–0002)" and adding, in its place "(18–05–17)"; removing the designation for paragraph (d)(1); redesignating paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) as paragraphs (d)(1), (d)(2), and (d)(3), respectively; and removing paragraph (d)(2).

■ e. In the last sentence of paragraph (e), removing "Information Management Branch, Washington, DC 20202–4753" and adding, in its place "Office of the Chief Information Officer, Regulatory Information Management Group, Washington, DC 20202–4651."

[FR Doc. 04–5673 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Investigatory Material Compiled for Personnel Security and Suitability Purposes (18–10–02)

AGENCY: Department of Education.

ACTION: Notice of new, amended, altered and deleted systems of records; amendments.

SUMMARY: We publish this notice to amend the system of records "Investigatory Material Compiled for Personnel Security and Suitability Purposes" (18–10–02) by changing its numbering to 18–05–17, changing its system location from the Office of Inspector General to the Office of Management, adding a note to the categories of records in this system notice explaining that, to the extent that the Department has records of a personnel investigative nature that come from the Office of Personnel Management or its contractors, they are covered by OPM/CENTRAL–9, Personnel Investigations Records, and not this system notice, changing its purpose statement, routine uses, and system manager to reflect the move of the security program from the Office of Inspector General to the Office of Management, and updating the paragraphs on storage, retrievability, retention and disposal and safeguards to reflect current retention and security measures.

DATES: The amendments in this notice are effective on March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Sandra H. Warren, Chief, Personnel & Information (Non-Cyber) Security, Office of Management, Security Services, 400 Maryland Avenue, SW., room 2W229, Washington, DC 20202. Telephone: (202) 205–0127. 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.**

Amendments: The following amendments are made in the notice of new, amended, altered and deleted systems of records published in the **Federal Register** on June 4, 1999 (64 FR 30105):

1. On page 30153, third column, the identification number 18–10–02 is revised to read 18–05–17.

2. On page 30154, first and second columns, make the following amendments:

a. Under the heading **SYSTEM LOCATION**, paragraphs one and two are revised to read as follows:

Security Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

U.S. Office of Personnel Management, Federal Investigations Processing Center, PO Box 618, 1137 Branchton Road, Boyers, PA 16018–0618.

b. Under the heading **CATEGORIES OF RECORDS IN THE SYSTEM**, a footnote is added at the end of the paragraph to read as follows:

Note 1. To the extent that the Department of Education has records of a personnel investigative nature that come from OPM or its contractors, they are covered by OPM/CENTRAL–9, Personnel Investigations Records, and are not covered by this system notice.

c. Under the heading **PURPOSE(S)**, the paragraph is revised to read as follows:

Records in this system are maintained to provide the Office of Management and other responsible Department officials with information to assist them in making individual personnel determinations concerning suitability for Federal employment, security clearances, access to classified information or restricted areas, and evaluations as to acceptability for performance under Federal contracts or other agreements with the Federal Government. Incidental to this purpose, these records may also be disclosed to other Federal and non-Federal investigatory agencies to protect the public or Federal interest, or both.

d. Under the heading **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE**, routine use (3) is revised to read as follows:

(3) To a Federal, State, local, or foreign entity or other public authority responsible for the investigation, prosecution, enforcement, or implementation of a statute, rule, regulation, or order, when a record on its face or in combination with any other information indicates a violation or potential violation of law (whether civil, criminal, or regulatory in nature) if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity. It is Office of Management policy not to disclose records under this routine use that pertain to those questions for which the Office of Management has promised confidentiality under Standard Form 85P, Questionnaire for Public Trust Positions.

3. On page 30155, first and second columns, make the following amendments:

a. Under the heading **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE,** routine use (8) is revised to read as follows:

(8) *Disclosure for Use by Other Law Enforcement and Intelligence Agencies.* The Department may disclose information to any Federal, State, local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction. Under this routine use, the Department may also disclose information to Federal intelligence agencies for use in intelligence activities.

b. Under the heading **STORAGE,** the paragraph is revised to read as follows:

Records are maintained in secured space either in locked lektrievers, in a room accessible by access control card; or in fire resistant safes with manipulation proof combination locks, and in a computer database.

c. Under the heading **SAFEGUARDS,** the paragraph is revised to read as follows:

Folders are maintained in secured space in locked lektrievers, in a room accessible by access control card, or in fire resistant safes with manipulation proof combination locks. All records, including those records that are maintained on the computer database, are in limited access rooms. All employees are required to have an appropriate security clearance before they are allowed access, on a "need-to-know" basis, to the records. Computer databases are kept on a local area network that is not connected to any outside network including the Internet. Database accessibility is restricted to hard wire network connection from within the office or via modem. Authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources. All users have unique log-on codes and passwords. The password scheme requires that users must change passwords every 90 days and may not repeat the old password. Any individual attempting to log on who fails is locked out of the system after three attempts. Access after that time requires intervention by the system manager.

d. Under the heading **RETENTION AND DISPOSAL,** the paragraph is revised to read as follows:

Most background investigative records are maintained no later than 5 years after separation or transfer of employee or no later than 5 years after contract relationship expires, whichever is applicable in accordance with General Records Schedule 18, Item 22. Reports of background investigations that were conducted under delegated authority from the Office of Personnel Management by the Office of Inspector General are retained for 15 years after the last investigative activity, except for investigations involving potentially actionable issue(s), which are maintained for 25 years after the last investigative activity. The records are disposed of by electronic erasure or shredding.

e. Under the heading **SYSTEM MANAGER(S) AND ADDRESS,** the paragraph is revised to read as follows:

Security Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W229, Washington, DC 20202.

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Dated: March 9, 2004.

William J. Leidinger,

Assistant Secretary for Management and Chief Information Officer.

[FR Doc. 04–5674 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Office for Civil Rights Complaint Files and Log

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of proposed alterations to its system of records for the Complaint Files and Log (18–08–01). These alterations serve to update the system of records to reflect current administrative and related procedures, the implementation of a new computer system to maintain what formerly and exclusively were paper files, the deletion and consolidation of the Case Information System into the Complaint Files and Log system, the renumbering of the Complaint Files and Log system notice from 18–08–02 to 18–08–01, revisions to the purpose statement, and the addition of a new routine use disclosure.

DATES: The Department seeks comments on the altered system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before April 14, 2004.

The Department filed a report describing the altered 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 March 9, 2004. This altered system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on April 18, 2004, or (2) April 14, 2004, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this altered system of records to Sandra G. Battle, Director, Program Legal Group, Office for Civil Rights, room 5036, MES Building, 400 Maryland Avenue, SW., Washington, DC 20202–6132. The fax number for submitting comments is (202) 260–3040. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term "Complaint Files and Log" in the subject line of the electronic message.

During and after the comment period, you may inspect all public comments about this notice in room 5036, MES Building, 330 C Street, SW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for 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: Sandra G. Battle. Telephone: (202) 205–5526. 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 in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of an altered 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 a record 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** and to prepare reports for OMB whenever the agency publishes a new or altered system of records. Each agency is also required 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.

Examples of when a system of records is considered altered include an expansion of the types or categories of information or an addition of a new routine use for information maintained in the system. Since the last publication of these system of records notices in the **Federal Register** on June 4, 1999 (64 FR

30143–30146), a number of technical changes are needed to update and accurately describe the current system of records.

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Dated: March 9, 2004.

Kenneth L. Marcus,

Senior Counsel for Civil Rights.

For the reasons discussed in the preamble, the Office for Civil Rights of the U.S. Department of Education publishes a notice of an altered system of records as follows:

DELETED SYSTEM

The Department of Education (Department) identifies system of records 18–08–02, Complaint Files and Log, 64 FR 30145–30146 (June 9, 1999) to be deleted, because it has been merged into and consolidated with the following system of records notice.

ALTERED SYSTEM

18–08–01

SYSTEM NAME:

Complaint Files and Log.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Room 5000 MES, Washington, DC 20202.

See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals or groups of individuals who have made civil rights complaints to the Office for Civil Rights (OCR).

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system consists of records relating to complaints to the Office for Civil Rights including—

(1) Names, addresses, and telephone numbers of complainants, complaint allegations, and results of investigations;

(2) Correspondence related to the complaint, which may include copies of correspondence sent by OCR to others, correspondence received by OCR, records of telephone conversations, copies of e-mail, or other written communications;

(3) Investigator and attorney memoranda;

(4) Interview notes or transcriptions and witness statements;

(5) Documents gathered during an investigation, including photographs of persons or things, portions of a recipient institution's records, and complainants' or other individuals' scholastic, medical, or employment records; and

(6) Charts, prepared exhibits, or other analytical materials prepared by OCR staff or by consultants retained by OCR.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*; Title II of the Americans With Disabilities Act, 42 U.S.C. 12131, *et seq.*; and the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905.

PURPOSE(S):

The Office for Civil Rights uses this system for the following purposes:

(1) To determine and to document whether there was discrimination against the complainant or others;

(2) To record the steps taken to resolve a case;

(3) To store materials gathered, developed, or received during the processing of a case;

(4) To document the steps taken to resolve a case;

(5) To report the status of individual complaints to OCR managers and staff for tracking the progress of individual cases and to provide information used to prepare summaries of case processing activities; and

(6) To report to Congress, other agencies, and to the public to explain or document the work that has been accomplished.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES 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. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, under a computer matching agreement.

(1) *Disclosure to Congress, Other Agencies, or the Public.* The Department may disclose summary information derived from this system of records to Congress, other agencies, and the public to describe the kinds of work OCR has done or to document the work OCR has accomplished.

(2) *Disclosure to Recipients of Federal Financial Assistance, Witnesses, or Consultants.* The Department will release information contained in this system of records to recipients of Federal financial assistance, witnesses, or consultants if it determines that the release would assist OCR in resolving a civil rights complaint or in obtaining additional information or expert advice relevant to the investigation.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, tribal, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulations if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(4) *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, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulations, or order issued pursuant thereto.

(5) *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 of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department or one of its components determines that disclosure of certain records to an adjudicative body before which the Department or one of its components 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, Counsels, Representatives, and Witnesses.* If the Department or one of its components determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department or its component may disclose those records as a routine use to the party, counsel, representative, or witness.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the DOJ if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose information to a Member of Congress from the record 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.

(9) *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.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this system are contained in digital storage media and in file folders.

RETRIEVABILITY:

The records in this system are indexed by and retrievable by the name of the complainant, the complaint number, the name of the entity against which the complaint was filed, the basis for the alleged discrimination, and the stage of case processing.

SAFEGUARDS:

The system is maintained on secure computer servers located in one or more secure Department of Education network server facilities. OCR staff access information in the system through use of personal computers located in OCR offices. Data are transmitted among offices on secure servers through the Department of Education's Secure Wide Area Network. The Department of Education maintains the servers on which the records are stored in secure locations with controlled access. Access to OCR offices is controlled and available only to OCR staff and authorized visitors. Authorized OCR staff access the information system using individual user identifiers and passwords.

The system also limits data access by type of user and controls users' ability to alter records within the system. File folders containing non-digital information in the system are kept in lockable storage rooms. Access to offices in which storage rooms are located is restricted to OCR staff and authorized visitors. Similar records made before December 1993 were stored on magnetic tape, a format that is no longer in use, in a secure location in OCR Headquarters.

RETENTION AND DISPOSAL:

Records are disposed pursuant to the Education Department Records Disposition Schedule (ED/RDS) Part 4, item 1, as approved by the National Archives and Records Administration (NARA). Digital records are destroyed or deleted when no longer needed for administrative, legal, or audit purposes. Records maintained at the Headquarters Office will be transferred to the Federal Records Center (FRC) after the case has been inactive for five years. Records at the regional offices are transferred to the FRC after the record has been inactive for two years. Records that are no longer needed will be destroyed 15 years after the end of the fiscal year in which the case is resolved.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5000, MES Building, Washington, DC 20202.

NOTIFICATION PROCEDURE:

This system is exempted from 5 U.S.C. 552a(e)(4)(G) pursuant to 34 CFR 5b.11(c)(2)(iii).

RECORD ACCESS PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e)(4)(H) pursuant to 34 CFR 5b.11(c)(2)(iii).

CONTESTING RECORD PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e)(4)(H) pursuant to 34 CFR 5b.11(c)(2)(iii).

RECORD SOURCE CATEGORIES:

Records are derived from information in complaint investigation files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary of Education has exempted by regulations the two record systems that are being combined into the Complaint Files and Log record system, which is thereby also exempt from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552(k)(2) (civil enforcement):

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e)(4)(G) and (H) regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

These exemptions are stated in 34 CFR 5b.11. As indicated in 34 CFR 5b.11, individuals will be provided with information from a record in this system if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of that material, except when in accordance with the following provisions of 5 U.S.C. 552a(k)(2):

(1) Disclosure of the information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(2) If information was obtained prior to September 28, 1975, disclosure of the information would reveal the identity of the source under an implied promise that the identity of the source would be held in confidence.

Appendix to 18–08–01

ADDITIONAL SYSTEM LOCATIONS:

OCR, Boston Office, J.W. McCormack Post Office and Court House Building, Room 701, Boston, MA 02109.

OCR, New York Office, 75 Park Place, 14th Floor, New York, NY 10007.

OCR, Philadelphia Office, 100 Penn Square East, Suite 515, Philadelphia, PA 19107.

OCR, Chicago Office, 111 North Canal Street, Room 1053, Chicago, IL 60606.

OCR, Cleveland Office, Bank One Center, 600 Superior Avenue, East, Suite 750, Cleveland, OH 44114.

OCR, Atlanta Office, Sam Nunn Federal Office Building, 61 Forsyth Street, SW., Suite 19T70, Atlanta, GA 30303.

OCR, Dallas Office, 1999 Bryan Street, Suite 2600, Dallas, TX 75201.

OCR, Kansas City Office, 8930 Ward Parkway, Suite 2037, Kansas City, MO 64114.

OCR, Denver Office, Colonnade Building, 1244 Speer Boulevard, Suite 300, Denver, CO 80204.

OCR, San Francisco Office, Old Federal Building, 50 United Nations Plaza, Room 239, San Francisco, CA 94102.

OCR, Seattle Office, Henry M. Jackson Federal Building, 915 Second Avenue, Room 3310, Seattle, WA 98174.

OCR, District of Columbia Office, 100 Pennsylvania Ave., NW., Rm. 316, P.O. Box 14620, Washington, DC 20004.

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Part VI

Department of Education

Smaller Learning Communities Program; Notices

DEPARTMENT OF EDUCATION

RIN 1830 ZA04

Smaller Learning Communities Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final requirements, priorities, and selection criteria for Fiscal Year (FY) 2003 and subsequent years funds.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces final requirements, priorities, and selection criteria under the Smaller Learning Communities (SLC) Program. The Assistant Secretary will use these requirements, priorities, and selection criteria for a competition using fiscal year (FY) 2003 funds and may use them in later years.

We intend these final requirements, priorities and selection criteria to further the purpose of the SLC program, which is to promote academic achievement through the planning, implementation or expansion of small, safe and successful learning environments in large public high schools.

EFFECTIVE DATE: These final requirements, priorities and selection criteria are effective April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Williams, U.S. Department of Education, OVAE MES room 5518, 400 Maryland Avenue, SW., Washington, DC 20202–7120. Telephone: (202) 205–0242 or via Internet at *deborah.williams@ed.gov.*

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:

Background

The Smaller Learning Communities program is authorized under title V, part D, subpart 4 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7249), as amended by Public Law 107–110, the No Child Left Behind Act of 2001.

The No Child Left Behind Act of 2001 is the most sweeping reform of Federal education policy in a generation. It is designed to implement the President's agenda to improve America's public schools by: (1) Ensuring accountability for results, (2) providing unprecedented flexibility in the use of Federal funds in implementing education programs, (3) focusing on proven educational methods, and (4) expanding educational choice for parents. Since the enactment of the original ESEA in 1965. the Federal Government has spent more than $130 billion to improve public schools. Unfortunately, this investment in education has not yet eliminated the achievement gap between affluent and lower-income students or between minority students and non-minority students.

One strategy that holds promise for improving the academic performance of our Nation's young people is the establishment of smaller learning communities as components of comprehensive high school improvement plans. The problems of large high schools and the related question of optimal school size have been debated for the last 40 years and are of growing interest today. Approximately 50 percent of American high schools enroll 1,000 or more students; nearly 70 percent of high school students attend schools enrolling more than 1,500 students. Some students attend schools enrolling as many as 4,000 to 5,000 students.

While the research on school size to date has been largely non-experimental, there is a growing body of evidence that suggests that smaller schools may have advantages over larger schools. Research suggests that the positive outcomes associated with smaller schools stem from the schools' ability to create close, personal environments in which teachers can work collaboratively, with each other and with a small set of students, to challenge students and support learning. A variety of structures and operational strategies are thought to provide important supports for smaller learning environments; some data suggest that these approaches offer substantial advantages to both teachers and students (Ziegler 1993; Caroll 1994).

Structural changes for recasting large schools as a set of smaller learning communities are described in the Conference Report for the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, H.R. Conference Report No. 106–479, at 1240 (1999)). These methods and strategies include establishing small learning clusters, "houses," career academies, magnet programs, and schools-within-a-school. Other activities may include: Freshman transition activities, advisory and adult advocate systems, academic teaming, multi-year groupings, "extra help" or accelerated learning options for students or groups of students entering below grade level, and other innovations designed to create a more personalized high school experience for students. These structural changes and personalization strategies, by themselves, are not likely to improve student academic achievement. They do, however, create valuable opportunities to improve the quality of instruction and curriculum, and to provide the individualized attention and academic support that all students need to excel academically. The SLC program encourages Local Education Agencies (LEAs) to set higher academic expectations for all of their students and to use these strategies to provide students with the effective instruction and personalized academic and social support they need to meet those expectations.

We published a notice of proposed requirements, priorities, and selection criteria for Fiscal Year (FY) 2003 and subsequent years funds in the **Federal Register** on January 7, 2004 (69 FR 1066). This notice of final requirements, priorities, and selection criteria contains several significant changes from the notice of proposed requirements, priorities, and selection criteria. We fully explain these changes in the Analysis of Comments and Changes section elsewhere in this notice.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed requirements, priorities, and selection criteria 16 parties submitted comments. An analysis of the comments and of any changes in the requirements, priorities, or selection criteria since publication of the notice of proposed requirements, priorities, and selection criteria follows.

Comments: Several commenters suggested we make clear under *Types of Grants* that Implementation Grant awardees are expected to begin program implementation in the first year of funding. The commenters suggested we require some actual outcomes in the first year of the grant and not allow grantees to use the first year for planning purposes.

Discussion: We agree that the requirement would be clearer with the change recommended by the commenters. The Implementation Grant is awarded to applicants who are expected to have the capacity to implement new smaller learning communities or expand an existing program. The first year is not to be used for planning purposes.

Changes: We have changed the timeframe for determining whether an Implementation Grant should be classified as High Risk as a result of

several factors, including not making substantial progress in specific goals set by the applicant.

Comments: Several commenters suggested the award ranges for Implementation Grants, especially those with larger high schools, be increased.

Discussion: We agree that the schools with larger student populations require higher funding levels to carry out the complex reform activities of this program, support the additional staff needed to provide the more personalized education that will result from implementing smaller learning communities, and procure the services of a qualified third party for an external evaluation of the project.

Changes: We have increased the award ranges for schools with student enrollments of more than 1,000 through more than 3,000 in this notice.

Comments: Several commenters requested clarification regarding an LEA applying for a grant on behalf of a consortium of districts. The commenters asked whether an intermediate school district could apply on behalf of a consortium of schools.

Discussion: If an entity is an LEA, has governing authority over eligible schools, and meets other eligibility requirements, the LEA may apply for a planning grant and/or an implementation grant as the fiscal agent for a consortium of two or more districts on behalf of their eligible schools.

Changes: None.

Comments: Several commenters sought clarification regarding whether adequate yearly progress would be the only indicator for review of the progress of SLCs.

Discussion: Adequate yearly progress will not be the only factor used to determine progress. Several factors will be used to review the progress of SLCs, including progress in achieving planned objectives, data submitted in response to performance indicators, the annual performance reports from the projects, the evaluation reports from the projects, and site visits to the projects.

Changes: None.

Comments: Several commenters sought clarification regarding placement of students and whether magnet programs are eligible as an SLC program.

Discussion: Magnet programs may be eligible as SLCs. This notice requires that students be placed at random or by student/parent choice to participate in an SLC program. They cannot be placed as a result of testing, any form of competition, or any other judgment. Magnet programs are eligible as SLC programs if they do not use any form of testing or selection process other than random selection or student/parent choice for placement of students.

Changes: None.

Comments: Several commenters sought clarification and several commenters requested a change in the requirement regarding funding schools that have benefited from previous planning and implementation grants.

Discussion: We are seeking to provide access to SLC grant funds to more districts across the country. Therefore schools that received funds through planning grants in a prior year's competition will not be eligible to apply for additional planning grants and schools that received funds through implementation grants in a prior year's competition will not be eligible to apply for additional implementation grants. Grantees are expected to work toward sustainability of funding to support programs after the federal funding period.

Changes: None.

Note: This notice of final requirements, priorities and selection criteria does *not* solicit applications. In any year in which we choose to use these requirements, priorities and selection criteria, we invite applications through a notice in the **Federal Register**.

Application Requirements

The Assistant Secretary announces the following application requirements for the SLC program. These requirements are in addition to the content that all Smaller Learning Communities grant applicants must include in their applications as required by the program statute under title V, part D, subpart 4, section 5441(b) of the ESEA. A discussion of each application requirement follows:

A. Proof of Eligibility

To be considered for funding, LEAs must identify in their applications the name(s) of the eligible school(s) and the number of students enrolled in each school. Enrollment figures must be based upon data from the current school year or data from the most recently completed school year. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application.

B. School Report Cards

We require that LEAs provide, for each school included in the application, the most recent "report card" produced by the State or the LEA to inform the public about the characteristics of the school and its students and student academic achievement and other student outcomes. These "report cards" must include, at a minimum, the information that LEAs are required to report for each school under section 1111(h)(2)(B)(ii) of the ESEA: (1) Whether the school has been identified for school improvement; and (2) information that shows how the academic assessments and other indicators of adequate yearly progress compare to students in the LEA and the State performance of the school's students on the statewide assessment as a whole.

C. Types of Grants

The Secretary will award two types of grants in this competition: (1) Planning grants, which will be awarded to support planning, design, and other preparatory activities that culminate in the development of a detailed plan for the implementation of a smaller learning communities program in a school; and (2) implementation grants, which will be awarded to applicants to support the implementation of a new smaller learning community program within each targeted high school, or to expand an existing smaller learning community program.

Planning grants will be awarded for a period of up to 12 months, and implementation grants will be awarded for a period of up to 36 months. We require that applicants for implementation grants provide detailed, yearly budget information for the total grant period requested. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, we anticipate awarding the entire amount for implementation grants at the time of the initial award.

Applicants pursuing planning grant funds must not yet have developed a viable plan for creating smaller learning communities in the school(s) that will be served by the grant. To apply for implementation grant funds, applicants must be prepared to implement a new smaller learning communities program within each targeted high school, or to expand an existing smaller learning communities program. The first year of implementation grant funds is not to be used for planning purposes.

D. Applications on Behalf of Multiple Schools

In an effort to encourage systemic, district-level reform efforts, the Secretary is permitting an individual LEA to submit only one planning grant application and one implementation grant application in a competition,

specifying in each application which high schools the LEA intends to fund.

An LEA may not apply on behalf of a high school for which it does not have governing authority, such as a high school in a neighboring school district. An LEA, however, may form a consortium with another LEA and submit a joint application for funds. They must follow the procedures for group applications described in 34 CFR 75.127–75.129 in EDGAR.

An LEA may not apply for both a planning and implementation grant on behalf of the same high school. A single high school could be included in either the LEA's planning grant application or its implementation grant application, but not both. An LEA may apply only for one planning grant and one implementation grant whether the LEA applies independently or as part of a consortium application.

E. Award Ranges/Project Periods

For a one-year planning grant, LEAs applying on behalf of only one school are eligible for a grant in the range of $25,000 to $50,000. LEAs applying on behalf of a group of eligible schools may receive up to $250,000 per planning grant depending on the number of schools included in the application. To ensure sufficient planning funds at the local level, LEAs may not request funds for more than 10 schools in a single application for a planning grant. The following chart provides the ranges for awards for planning grants:

PLANNING GRANTS

Number of schools in LEA application	Award ranges
One School	$25,000–$50,000
Two Schools	$50,000–$100,000
Three Schools	$75,000–$150,000
Four Schools	$100,000–$200,000
Five Schools	$125,000–$250,000
Six Schools	$150,000–$250,000
Seven Schools	$175,000–$250,000
Eight Schools	$200,000–$250,000
Nine Schools	$225,000–$250,000
Ten Schools	$250,000

Applicants requesting more funds than the maximum amounts specified for any school or for the total grant will be declared ineligible for funding, and their applications will not be read. However, an applicant may request an amount lower than the suggested minimum for an individual school or for the overall grant based on the pertinent number of schools.

Schools that received funding through planning grants in a prior year competition will not be eligible to receive funding for additional planning grants in this or future competitions.

For a 36-month implementation grant, LEAs may receive, on behalf of a single school, $250,000 to $550,000, depending upon the size of the school. LEAs applying on behalf of a group of eligible schools could receive up to $5,500,000 per implementation grant. Implementation grants are designed to support extensive redesign and improvement efforts, professional development, direct student services, and other activities associated with creating or expanding a smaller learning community program. To ensure that sufficient funds are available to support implementation activities, LEAs may not request funds for more than 10 schools in a single application for an implementation grant.

The following chart provides the ranges of awards per high school for implementation grants:

IMPLEMENTATION GRANTS

Student enrollment	Award ranges per school
1,000–1,500 Students	$250,000–$300,000
1,501–2,000 Students	$250,000–$400,000
2,001–2,500 Students	$250,000–$450,000
2,501–3,000 Students	$250,000–$500,000
More than 3,000 Students	$250,000–$550,000

Applicants requesting more funds than the maximum amounts specified for any school or for the total grant would be declared ineligible for funding, and their applications will not be read. However, an applicant may request an amount lower than the suggested minimum for an individual school or for the overall grant based on the pertinent number of schools.

Schools that received funding through implementation grants in a prior year competition will not be eligible to receive funding for additional implementation grants in this or future competitions.

In previous SLC competitions, some applicants have requested more funds than the amount that we indicated would be available for a grant. Their applications included any number of activities that could only be made possible if the applicants received a funding amount that exceeded the maximum amount specified in the notice. This strategy put at a competitive disadvantage other applicants who requested funds within the specified funding range and outlined a less extensive set of activities. For this reason, we will fund only those applications that request an amount that does not exceed the maximum amounts specified for planning and implementation grants.

The actual size of awards will be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed program, and the range of awards indicated in the application.

F. Student Placement

Section 5441(b)(13) of the ESEA, as amended by the No Child Left Behind Act of 2001, requires applicants for SLC grants to describe the method of placing students in the smaller learning community or communities, such that students are not placed according to ability or any other measure, but are placed at random or by student/parent choice, and not pursuant to testing or other judgments. For instance, projects that place students in any smaller learning community on the basis of their prior academic achievement or performance on an academic assessment are not eligible for assistance under this program.

To be considered for funding, applicants for planning grants must include in their application an assurance that the applicant will identify, as part of the planning process, methods of selecting or placing students in a smaller learning community that are not according to ability or any other measure but are at random or by student/parent choice, and not pursuant to testing or other judgments.

Applicants for implementation grants must include an assurance/description of how students will be selected or placed in a smaller learning community such that students will not be placed according to ability or any other measure, but will be placed at random or by student/parent choice, and not pursuant to testing or other judgments.

G. Including All Students

Applicants for planning grants are required to develop plans to implement or expand a smaller learning community program that will include every student within the school by no later than the end of the fourth school year of implementation. Applicants for implementation grants are required to implement or expand a smaller learning community program that will include every student within the school by no later than the end of the fourth school year of implementation. Elsewhere in this notice, we define a smaller learning community as an environment in which a core group of teachers and other adults within the school know the needs, interests and aspirations of each student well, closely monitor his or her progress, and provide the academic and

other support he or she needs to succeed.

H. Reporting Requirement for Recipients of Planning Grants

We require recipients of planning grants to include as part of their final performance report a copy of the implementation plan they developed during the project period.

I. Performance Indicators

The Secretary requires applicants for implementation grants to identify in their application specific performance indicators and annual performance objectives for each of these indicators. Specifically, applicants are required to use the following performance indicators to measure the progress of each school:

1. The percentage of students who scored at the proficient and advanced levels on the reading/language arts and mathematics assessments used by the State to measure adequate yearly progress under Part A of Title I of ESEA, disaggregated by subject matter and the following subgroups:

a. All students;

b. Major racial and ethnic groups;

c. Students with disabilities;

d. Students with limited English proficiency; and

e. Economically disadvantaged students.

2. The school's graduation rate, as defined in the State's approved accountability plan for Part A of Title I of ESEA;

3. The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training for the semester following graduation; and

4. The percentage of graduates who are employed by the end of the first quarter after they graduate (*e.g.*, for students who graduate in May or June, this would be September 30).

In addition to the four required indicators listed above, applicants may choose to set performance levels for other appropriate indicators, such as:

1. Rates of average daily attendance and year-to-year retention;

2. Achievement and gains in English proficiency of limited English proficient students;

3. The incidence of school violence, drug and alcohol use, and disciplinary actions;

4. The percentage of students completing advanced placement courses, and the rate of passing advanced placement tests (such as Advanced Placement, International Baccalaureate, and courses for college credit); and

5. The level of teacher, student, and parent satisfaction with the Smaller Learning Communities structures and strategies being implemented.

Applicants for implementation grants are required to include in their applications their most recent School Report Card. Upon receipt of awards, recipients of implementation grants will be required to provide baseline data responding to each of these indicators for the three years preceding the baseline year. Specific instructions will be sent from us to grant recipients. Recipients of implementation grants will be required to report annually on the extent to which each school achieved its performance objectives for each indicator during the preceding school year. Additionally, implementation grantees will have to submit a final Annual Performance Report at the end of the fourth year of implementation. We require grantees to include in these reports comparable data, if available, for the preceding three school years so that trends in performance will be more apparent.

J. Evaluation of Implementation Grants

The Assistant Secretary requires recipients of implementation grants to support an evaluation of the project that will provide information to the project director and school personnel that will be useful in gauging their progress and in identifying areas for improvement. Each project must include an annual evaluation report for each of the three years of the project period and a final evaluation report that will be completed at the end of the fourth year of implementation. We require that grantees submit each of these reports to us.

In addition, the Assistant Secretary requires that the evaluation be conducted by an independent third party whose role in the project is limited to conducting the evaluation.

K. Forty-Eight (48) Month Management Plan

The Assistant Secretary requires applicants for implementation grants to include in their applications a management plan for the 12 months following the end of the 36-month project period, and a budget for these activities that will be supported by other Federal, State, local, or private funds. Recipients of implementation grants are required to submit to us a copy of the final evaluation report and a final Annual Performance Report that will be completed at the end of the fourth year of implementation.

L. High-Risk Status and Other Enforcement Mechanisms

Applicants should note that the requirements listed in this notice are material requirements. Failure to comply with any requirement or with any elements of the grantee's application may subject the grantee to administrative action, including but not limited to designation as a "high-risk" grantee, the imposition of special conditions, or termination of the grant. Circumstances that might cause the Department to take such action include, but are not limited to: The grantee's failure to show improvement on the required performance indicators by the end of the first year of implementation; the grantee's failure to demonstrate that performance remains above the baseline level; the grantee's failure to make substantial progress in completing the milestones outlined in the management plan as submitted in the application; and the grantee's expenditure of funds in a manner that is inconsistent with the budget as submitted in the application. The grantee's failure to carry out its plans for sustaining the program into the fourth year of implementation may be taken into account in a future competition in accordance with 34 CFR 75.217(d)(3). We may institute other remedies as appropriate.

M. Definitions

In addition to the definitions set out in the authorizing statute and 34 CFR 77.1, the following definitions also apply to this program:

Large High School: A large high school is an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

Smaller Learning Community: A smaller learning community is an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor his or her progress, and provide the academic and other support he or she needs to succeed.

BIA School: A BIA school is a school operated or supported by the Bureau of Indian Affairs.

Selection Criteria

The following criteria will be used to evaluate applications submitted for planning and implementation grants. Please note:

(a) The maximum score for both a planning and an implementation grant is 100 points.

(b) The maximum score for each criterion or factor under that criterion is indicated in parentheses.

Planning Grants

(a) Need for the project (10 points). In determining the need for the proposed project, we will consider the extent to which:

(1) (7 points) The applicant will devise a plan or plans to assist school(s) that have the greatest need for assistance relative to other high schools within the State, as indicated by—

(A) Student performance on the academic assessments in reading/language arts and mathematics administered by the State under Part A, Title I of the ESEA;

(B) Gaps in performance between all students and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency on the academic assessments in reading or language arts and mathematics administered by the State under Part A, Title I of the ESEA;

(C) The school's graduation rate, and gaps in the graduation rate between all students and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency;

(D) Disciplinary actions and reported incidents of violence and of drug and alcohol use;

(E) The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training in the semester following graduation, and gaps in the percentage of all students who enroll in postsecondary education, apprenticeships, and advanced training and that of economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency;

(2) (3 points) The applicant's planning activities will address effectively the needs it identified in paragraph (1);

(b) Foundation for planning (30 points). In determining whether there is an adequate foundation for the development of an effective implementation plan, we will consider the extent to which:

(1) (6 points) Teachers, administrators, and other school staff within each school support the proposed planning project and will be involved actively in the development of an implementation plan, including, particularly, those teachers who will be directly affected by the plan.

(2) (6 points) Teachers, administrators, and other school staff within each school will be provided sufficient and appropriate professional development to enable them to participate effectively in developing the implementation plan.

(3) (6 points) Teachers, administrators, and other school staff within each school will be provided sufficient paid release time during the regular school day or compensated time outside school hours to participate actively in professional development, planning, and preparatory activities.

(4) (6 points) Parents, students, and other community stakeholders (such as institutions of higher education, employers, and community organizations, including local non-profit agencies, faith-based organizations, and other service organizations) support the proposed planning project and will be involved actively in the development of an implementation plan.

(5) (6 points) The implementation or expansion of a smaller learning community program is consistent with, and will advance State and local initiatives to improve student achievement and narrow gaps in achievement between all students and students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

(c) Quality of project design. (40 points) In evaluating the quality of the project design, we will consider the extent to which the applicant will adequately and effectively investigate and incorporate in its implementation plan:

(1) (10 points) Research-based strategies, services, and interventions that are likely to improve overall student achievement and other outcomes (including graduation and enrollment in postsecondary education) and narrow any gaps in achievement between all students and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

(2) (10 points) Research-based strategies, services, and interventions to accelerate learning by students who enter high school with reading/language arts or mathematics skills that are significantly below grade level so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, an apprenticeship, or advanced training.

(3) (10 points) A high-quality program of sustained and intensive professional development that will be provided to teachers, administrators, and school staff to assist them in carrying out the implementation plan.

(4) (10 points) Strategies for using funds provided under the ESEA, the Carl D. Perkins Vocational and Technical Education Act, or other Federal programs, as well as local, State, and private funds, to carry out the implementation plan.

(d) Adequacy of resources. (20 points) In determining the adequacy of the financial and personnel resources to support effective planning, we will consider the extent to which:

(1) (8 points) The budget is adequate and funds will be used appropriately and effectively to develop a comprehensive implementation plan.

(2) (6 points) The time commitments of the project director and other key project personnel are appropriate and adequate to achieve the objectives of the proposed project.

(3) (6 points) The qualifications, including relevant training and experience, of the project director and other key project personnel.

Implementation Grants

(a) Need for the project (10 points). In determining the need for the proposed project, we will consider the extent to which the applicant will:

(1) (5 points) Assist schools that have the greatest need for assistance, as indicated by, relative to other high schools within the State:

(A) Student performance on the academic assessments in reading/language arts and mathematics administered by the State under Part A, Title I of the ESEA;

(B) Gaps in the performance of all students and that of economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency on the academic assessments in reading or language arts and mathematics administered by the State under Part A, Title I of the ESEA.

(C) The school's graduation rate, and gaps in the graduation rate between all students and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

(D) Disciplinary actions and reported incidents of violence and of drug and alcohol use;

(E) The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training in the semester following graduation, and gaps in the percentage of students who

enroll in postsecondary education, apprenticeships, and advanced training between all students and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

(2) (5 points) Employ strategies and carry out activities in its implementation of the proposed project that address the needs it has identified in paragraph (1);

(b) Foundation for Implementation (15 points). In determining the quality of the implementation plan for the proposed project, we will consider the extent to which:

(1) (3 points) Teachers within each school support the proposed project and have been and will continue to be involved in its planning, development, and implementation, including, particularly, those teachers who will be directly affected by the proposed project.

(2) (3 points) Administrators, teachers, and other school staff within each school support the proposed project and have been and will continue to be involved in its planning, development, and implementation.

(3) (3 points) Parents, students, and other community stakeholders (such as institutions of higher education, employers, and community organizations, including local non-profit agencies, faith-based organizations, and other service organizations) support the proposed project and have been and will continue to be involved in its planning, development, and implementation.

(4) (3 points) The proposed project is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement between all students and students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, or students with limited English proficiency.

(5) (3 points) The applicant demonstrates that it has reviewed relevant scientifically based and other rigorous research and carried out sufficient planning and preparatory activities, outreach, and consultation with teachers, administrators, and other stakeholders to enable it to implement the proposed project at the beginning of the school year immediately following receipt of an award.

(c) Quality of Project Design (30 points). In determining the quality of the design of the project we will consider the extent to which, using funds provided by this program in conjunction with other Federal, State, local, or private funds, the proposed project will:

(1) (6 points) Implement strategies, new organizational structures, or other changes in practice that are likely to create an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor his or her progress, and provide the academic and other support he or she needs to succeed.

(2) (6 points) Implement research-based strategies, services, and interventions that are likely to improve overall student achievement and other outcomes (including graduation and enrollment in postsecondary education) and narrow any gaps in achievement between all students and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, or students with limited English proficiency, such as—

(A) More rigorous academic curriculum for all students, and the provision of academic support to struggling students who need assistance to master more challenging academic content;

(B) More intensive and individualized educational counseling and career and college guidance, provided through mentoring, teacher advisories, adult advocates, or other means;

(C) Strategies designed to increase average daily attendance, increase the percentage of students who transition from the 9th to 10th grade, and improve the graduation rate; and

(D) Expanding opportunities for students to participate in Advanced Placement courses and academic and technical courses that offer both high school and postsecondary credit.

(3) (6 points) Implement accelerated learning strategies and interventions that will assist students who enter the school with reading/language or mathematics skills that are significantly below grade level that—

(A) Will serve all students who enter the school with reading/language arts or mathematics skills that are significantly below grade level;

(B) Are designed to equip participating students with grade-level reading/language arts and mathematics skills by no later than the end of 10th grade;

(C) Are grounded in scientifically based research;

(D) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(E) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session;

(F) Will be delivered with sufficient intensity to improve the reading/language arts or math skills, as appropriate, of participating students; and

(G) Include sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

(4) (6 points) Provide high-quality, sustained and intensive professional development throughout the project period that—

(A) Improves the content knowledge of teachers of core academic subjects;

(B) Includes activities designed to enable all teachers of core academic subjects to become "highly qualified" as defined by ESEA by the end of the project period;

(C) Advances the understanding of teachers, administrators, and other school staff of effective, research-based instructional strategies for improving the academic achievement of students, including, particularly, students with academic skills that are significantly below grade level;

(D) Provides teachers, administrators, other school personnel, and parents with the knowledge and skills they need to participate effectively in the development and implementation of a smaller learning community, including professional development that improves the capacity of teachers to deliver instruction and support students within a smaller learning community;

(5) (6 points) Provides the participating schools sufficient flexibility and autonomy to enable school administrators, teachers, other school staff, and parents to participate as full partners in the implementation of the proposed project.

(d) Quality of the Management Plan (25 points). In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) (10 points) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks.

(2) (5 points) The extent to which the time commitments of the project director and other key personnel, including the individuals who will have primary responsibility for implementing the project at each school, are appropriate and adequate to achieve the objectives of the proposed project.

(3) (5 points) The qualifications, including relevant training and experience, of the project director and other key personnel, including the individuals who will have primary responsibility for professional development and technical assistance, and the individuals responsible for implementing the project at each school.

(4) Adequacy of resources. (5 points) In determining the adequacy of resources for the proposed project, we consider:

(A) The extent to which the budget is adequate and costs are directly related to the objectives and design of the proposed project.

(B) The extent to which the applicant will use funds provided under the ESEA, the Carl D. Perkins Vocational and Technical Education Act, or other Federal programs, as well as discretionary grants provided by the State or private sources, to support the implementation of the project;

(C) The potential for continued support of the project after Federal funding ends.

(e) Quality of Project Evaluation. (20 points) In determining the quality of the project evaluation conducted by an independent, third party evaluator, we consider the following factors:

(1) (4 points) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) (4 points) The extent to which the evaluation will collect and annually report accurate, valid, and reliable data for each of the required performance indicators, including student achievement data that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

(3) (4 points) The extent to which the evaluation will collect additional qualitative and quantitative data that will be useful in assessing the success and progress of implementation, including, at a minimum:

(A) The results of multiple measures of student academic achievement, including results that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, students with limited English proficiency, and other subgroups identified by the applicant.

(B) Rates of average daily attendance, year-to-year retention, and graduation that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, students with limited English proficiency, and other subgroups identified by the applicant.

(C) Information on the satisfaction and perspectives of teachers, administrators, parents, and students at each school.

(D) Information on the extent to which the school is providing a safe and orderly environment for learning, such as the number of disciplinary actions, incidents of violence or drug or alcohol use, or other indicators identified by the applicant.

(E) Information on the progress of the school in creating an environment in which a core group of teachers and other adults within the school know the needs, interests and aspirations of each student well, closely monitor his or her progress, and provide the academic and other support he or she needs to succeed.

(4) (4 points) The extent to which the methods of evaluation will provide timely and regular feedback to the LEA and the school on the success and progress of implementation, and identify areas for needed improvement.

(5) (4 points) The qualifications and relevant training and experience of the independent evaluator.

Discussion of Priorities

Note: In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register.** When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1: Helping All Students To Succeed in Rigorous Academic Courses (Planning Grants)

This priority will support projects that will develop a plan to create or expand a smaller learning community program that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts and mathematics skills that are significantly below grade level "catch up" quickly so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, an apprenticeship, or advanced training.

These accelerated learning strategies and interventions must:

(1) Be grounded in the findings of scientifically based and other rigorous research;

(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

Priority 2: Helping All Students To Succeed in Rigorous Academic Courses (Implementation Grants)

This priority will support projects that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts or mathematics skills that are significantly below grade level "catch up" quickly so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, an apprenticeship, or advanced training.

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(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on

weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number 84.215L, Smaller Learning Communities Program)

Program Authority: 20 U.S.C. 7249.

Dated: March 9, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–5817 Filed 3–12–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Smaller Learning Communities (SLC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

Dates:

Applications Available: March 15, 2004.

Deadline for Transmittal of Applications: April 29, 2004.

Deadline for Intergovernmental Review: June 28, 2004.

Eligible Applicants: Local educational agencies (LEAs), including schools funded by the Bureau of Indian Affairs (BIA schools), applying on behalf of large public high schools are eligible. For purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above. Additional information regarding applicant eligibility requirements is provided elsewhere in this notice in Section III. Eligibility Information, 1. *Eligible Applicants.*

Estimated Available Funds: $160,947,000.

Estimated Range of Awards: See chart under Section II. Award Information.

Estimated Number of Awards: 90 Planning Grants and 120 Implementation Grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months for Planning Grants and up to 36 months for Implementation Grants.

Full Text of Announcement

Funding Opportunity Description

Purpose of Program: The purpose of the Smaller Learning Communities Program is to promote academic achievement through the planning, implementation or expansion of small, safe, and successful learning environments in large public high schools to help ensure that all students graduate with the knowledge and skills necessary to make successful transitions to college and careers.

Priorities: These priorities are from the notice of final requirements, priorities and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2003 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1: Helping All Students To Succeed in Rigorous Academic Courses (Planning Grants)

This priority will support projects that will develop a plan to create or expand a smaller learning community program that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts and mathematics skills that are significantly below grade level "catch up" quickly so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, an apprenticeship, or advanced training.

These accelerated learning strategies and interventions must:

(1) Be grounded in the findings of scientifically based and other rigorous research;

(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

Absolute Priority 2: Helping All Students to Succeed in Rigorous Academic Courses (Implementation Grants)

This priority will support projects that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts or mathematics skills that are significantly below grade level "catch up" quickly so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, an apprenticeship, or advanced training.

These accelerated learning strategies and interventions must:

(1) Be grounded in the findings of scientifically based and other rigorous research;

(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

Program Authority: 20 U.S.C. 7249.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) the requirements, priorities and selection criteria contained in the notice of final requirements, priorities, and selection criteria as published elsewhere in this issue of the **Federal Register**.

Note: The regulations in part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary Planning Grants and Implementation Grants.

Estimated Available Funds: $160,947,000.

Estimated Range of Awards: The Secretary will award both planning and implementation grants under this competition.

A. *Planning Grants.* The amount of an award for a planning grant is based on the number of schools the applicant proposes to serve. For a one-year planning grant, LEAs may receive, on behalf of a single school, $25,000 to $50,000 per project. LEAs applying on behalf of a group of eligible schools may receive up to $250,000 per planning grant depending on the number of schools included in the application. LEAs must stay within the maximum school allocations when determining their group award request. Therefore, in order to ensure sufficient planning funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides the ranges of awards for planning grants:

Number of schools	Award ranges
One School	$25,000–$50,000
Two Schools	$50,000–$100,000
Three Schools	$75,000–$150,000
Four Schools	$100,000–$200,000
Five Schools	$125,000–$250,000
Six Schools	$150,000–$250,000
Seven Schools	$175,000–$250,000
Eight Schools	$200,000–$250,000
Nine Schools	$225,000–$250,000
Ten Schools	$250,000

B. *Implementation Grants.* The amount of an award for an implementation grant is based on the enrollment of the schools the applicant is proposing to serve. For a three-year implementation grant, LEAs may receive, on behalf of a single school, $250,000 to $550,000, depending upon the size of the school. LEAs applying on behalf of a group of eligible schools may request up to $5,500,000 per implementation grant. As with planning grants, LEAs must stay within the maximum school allocations when determining their group award request, or they will be declared ineligible and their applications will not be read. In order to ensure sufficient funds are available to support implementation activities, LEAs may not request funds for more than 10 schools under a single application for an implementation grant.

The chart below provides the ranges of awards for implementation grants:

Student enrollment	Award ranges per school
1,000–1,500 Students	$250,000–$300,000
1,501–2,000 Students	$250,000–$400,000
2,001–2,500 Students	$250,000–$450,000
2,501–3,000 Students	$250,000–$500,000
More than 3,000 Students	$250,000–$550,000

Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, the Secretary anticipates awarding the entire amount for an implementation grant at the time of the initial award.

Note: The Department will fund only those applications that correctly request funds within the maximum award ranges specified in this notice for both planning and implementation grants. Applicants requesting funding in amounts higher than the award ranges dictated by the number of schools or the enrollment of the schools to be served will be declared ineligible and their applications will not be read. However, an applicant may request an amount lower than the suggested minimum for an individual school or for the overall grant based on the pertinent number of schools.

Estimated Number of Awards: 90 Planning Grants and 120 Implementation Grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months for Planning Grants and up to 36 months for Implementation Grants.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including BIA schools, applying on behalf of large public high schools are eligible. For purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

We do not permit an LEA to apply on behalf of a high school for which it does not have governing authority, such as a high school in a neighboring school district. An LEA, however, may form a consortium with another LEA and submit a joint application for funds. They must follow the procedures for group applications described in 34 CFR 75.127–75.129 in EDGAR.

An LEA may submit only one planning grant application and one implementation grant application and must specify in each application the high schools it intends to serve. An LEA may apply for only one planning grant and one implementation grant whether the LEA applies independently or as part of a consortium application. Additionally, an LEA may not apply for both a planning and implementation grant on behalf of the same high school. A single high school may only be included in either the LEA's planning grant application or its implementation grant application, but not both.

Applicants pursuing planning grant funds must not yet have developed a viable plan for creating smaller learning communities in the school(s) that will be served by the grant. To apply for implementation grant funds, applicants must be prepared to implement a new smaller learning communities program within each targeted high school, or to expand an existing smaller learning communities program. The first year of implementation grant funds is not to be used for planning purposes.

Schools that received funding through planning grants in previous competitions are not eligible to receive support through additional planning grants under this competition or future competitions. Schools that received funding through implementation awards in previous competitions are not eligible to receive additional support under this competition or future competitions.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Deborah Williams, U.S. Department of Education, OVAE, 400 Maryland Avenue, SW., MES room 5518, Washington, DC 20202–7120. Telephone: (202) 205–0242. FAX: (202) 401–4079.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may also obtain an application package via Internet from the following

address: *http://www.ed.gov/programs/slcp/applicant.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* To be considered for funding, LEAs must identify in their applications the name(s) of the eligible school(s) and the number of students enrolled in each school. Enrollment figures must be based upon data from the current school year or data from the most recently completed school year. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. Applicants must clearly identify the proposed grant-funded smaller learning communities in their application. Additional requirements concerning the content of an application are in the notice of final requirements, priorities and selection criteria for this program, published elsewhere in this issue of the **Federal Register**. These requirements, together with the forms you must submit, also are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: March 15, 2004.

Deadline for Transmittal of Applications: April 29, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 28, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the notice of final requirements, priorities, and selection criteria for Fiscal Year 2003 and subsequent years' funds and in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

Note: The requirements listed in this notice are material requirements. A failure to comply with any applicable program requirement (for example, failure to show improvement on the required performance indicators by the end of the first year of implementation) may subject a grantee to administrative action, including but not limited to designation as a "high-risk" grantee, the imposition of special conditions or termination of the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary requires applicants for implementation grants to identify in their application specific performance indicators and annual performance objectives for each of these indicators. Specifically, applicants are required to use the following performance indicators to measure the progress of each school:

1. The percentage of students who scored at the proficient and advanced levels on the reading/language arts and mathematics assessments used by the State to measure adequate yearly progress under Part A of Title I of ESEA, disaggregated by subject matter and the following subgroups:

a. All students;

b. Major racial and ethnic groups;

c. Students with disabilities;

d. Students with limited English proficiency; and

e. Economically disadvantaged students.

2. The school's graduation rate, as defined in the State's approved accountability plan for Part A of Title I of ESEA;

3. The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training for the semester following graduation; and

4. The percentage of graduates who are employed by the end of the first quarter after they graduate (*e.g.*, for students who graduate in May or June, this would be September 30).

In addition to the four required indicators listed above, applicants may choose to set performance levels for other appropriate indicators; such as:

1. Rates of average daily attendance and year-to-year retention;

2. Achievement and gains in English proficiency of limited English proficient students;

3. The incidence of school violence, drug and alcohol use, and disciplinary actions;

4. The percentage of students completing advanced placement courses, and the rate of passing advanced placement tests (such as Advanced Placement, International Baccalaureate, and courses for college credit); and

5. The level of teacher, student, and parent satisfaction with the Smaller Learning Communities structures and strategies being implemented.

Applicants for implementation grants are required to include in their applications their most recent School Report Card. Upon being awarded, recipients of implementation grants will be required to provide baseline data responding to each of these indicators for the three years preceding the baseline year. Specific instructions will be sent from us to grant recipients. Recipients of implementation grants will be required to report annually on the extent to which each school achieved its performance objectives for each indicator during the preceding school year. Additionally, implementation grantees will have to submit a final Annual Performance Report at the end of the fourth year of implementation. We require grantees to include in these reports comparable data, if available, for the preceding three

school years so that trends in performance will be more apparent.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Deborah Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room MES5518, Washington, DC 20202–7120. Telephone: (202) 205–0242 or by e-mail: *deborah.williams@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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VIII. Other Information

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Dated: March 9, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–5818 Filed 3–12–04; 8:45 am]

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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.

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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.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 743/P.L. 108–203

Social Security Protection Act of 2004 (Mar. 2, 2004; 118 Stat. 493)

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Native American Technical Corrections Act of 2004 (Mar. 2, 2004; 118 Stat. 542)

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CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[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.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

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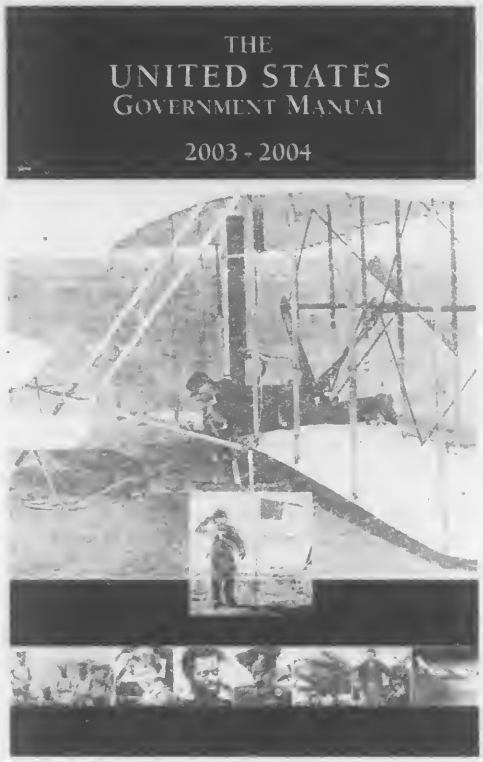

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