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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 04–009–1]

Brucellosis in Cattle; State and Area Classifications; Wyoming

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning interstate movement of cattle by changing the classification of Wyoming from Class Free to Class A. We have determined that Wyoming no longer meets the standards for Class Free status. This action is necessary to prevent the interstate spread of brucellosis.

DATES: This interim rule was effective February 13, 2004. We will consider all comments that we receive on or before April 20, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 04–009–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–009–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–009–1" on the subject line.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

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

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

If a single herd in a Class Free State is found to be affected with brucellosis, the State may retain its Class Free status if it meets the conditions described in paragraph (b)(4) of the definition of *Class Free State or area* in § 78.1. A State may retain its status in this manner only once during any 2-year period. The following conditions must be satisfied within 60 days of the identification of the infected animal:

1. The affected herd must be immediately quarantined, tested for brucellosis, and depopulated; and

2. An epidemiological investigation must be performed and the investigation must confirm that brucellosis has not spread from the affected herd. All herds on premises adjacent to the affected herd (adjacent herds), all herds from which animals may have been brought into the affected herd (source herds), and all herds that may have had contact with or accepted animals from the affected herd (contact herds) must be epidemiologically investigated, and each of those herds must be placed under an approved individual herd plan. If the investigating epidemiologist determines that a herd blood test for a particular adjacent herd, source herd, or contact herd is not warranted, the epidemiologist must include that determination, and the reasons supporting it, in the individual herd plan.

After the close of the 60-day period following the identification of the infected animal, APHIS will conduct a review to confirm that the requirements have been satisfied and that the State is in compliance with all other applicable provisions.

Prior to the effective date of this interim rule, Wyoming was classified as

a Class Free State. On December 29, 2003, we confirmed the discovery of a brucellosis-affected herd in Wyoming. In accordance with § 78.1, the State took immediate measures to maintain its Class Free status. However, on January 21, 2004, another brucellosis-affected herd was confirmed. With the discovery of the second affected herd, Wyoming no longer meets the standards for Class Free status. Therefore, we are removing Wyoming from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b).

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus*, of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) trace to the farm of origin at least 90 percent of all brucellosis reactors found in the course of MCI testing; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class A; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating a source herd or recipient herd. After reviewing the brucellosis program records for Wyoming, we have concluded that this State meets the standards for Class A status.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the interstate spread of brucellosis. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register.**

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the brucellosis regulations concerning interstate movement of cattle by changing the classification of Wyoming from Class Free to Class A. We have determined that Wyoming no longer meets the standards for Class Free status. This action is necessary to prevent the spread of brucellosis in the United States.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Wyoming from Class Free to Class A increases testing requirements governing the interstate movement of cattle. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are likewise not affected by this change.

The groups affected by this action will be herd owners in Wyoming, as well as buyers and importers of cattle from this State.

There were approximately 6,200 operations in Wyoming with a total inventory of 1.47 million head of cattle as of January 1, 2002. Of that inventory, 70 percent were breeding animals and the rest were composed of animals in feedlots and other animals not intended for breeding. Industry statistics indicate the average value per head of cattle in Wyoming is $780, with a reported cash value totaling over $1.14 billion. Of the 6,200 cattle and bison operations in Wyoming, more than 90 percent are small businesses. The downgrade from Class Free to Class A status will result in movement restrictions where none previously existed. Specifically, all bovine animals to be moved interstate, except those moving directly to slaughter or to quarantined feedlots and those from certified brucellosis-free herds, must test negative to a brucellosis test prior to interstate movement.

The estimated cost for brucellosis testing, which includes veterinary fees and handling expenses, is between $7.50 and $15 per test. Considering the average value per animal in Wyoming was $780 in 2002, even using the high-end estimate of $15 per test, testing costs would represent only 2 percent of the per head value. Of course, the interim rule will have a greater economic effect on herd owners who are more involved in interstate movement. It is estimated that 10 percent of cattle and calves in Wyoming move interstate. While this change in status will result in more restrictive requirements for interstate movement, the benefits of preventing the spread of brucellosis to other parts of the United States far outweigh the costs imposed.

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

Executive Order 12988

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

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

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by adding the word "and" before the word "Wisconsin" and by removing the words ", and Wyoming".

■ b. In paragraph (b), by removing the word "and" before the word "Texas" and adding a comma in its place, and by adding the words ", and Wyoming" following the word "Texas".

Done in Washington, DC, this 13th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3723 Filed 2–19–04; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB66

Financial Assistance Rules

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Assistance Regulations to make changes in the solicitation requirements and the way the public is notified of funding opportunities that result in the award of grants and cooperative agreements. The Department's Assistance Regulations currently require that solicitations or notices of solicitations be published in the **Federal Register**. Since March 2003, DOE has also been posting synopses of solicitations on the Grants.gov FIND module at *http://www.Grants.gov*. This is the government-wide Internet site for Federal agencies' announcements of financial assistance funding opportunities. DOE will continue providing notices of announcements of funding opportunities in both the **Federal Register** and at the Grants.gov FIND module until the effective date of this rule. After that date, DOE will no longer publish separate notices in the **Federal Register**, because the information is provided at the Grants.gov FIND Internet site.

EFFECTIVE DATE: This rule becomes effective on March 22, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Wood, Office of Procurement and Assistance Policy, Department of Energy, at (202) 586–5625.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) directed agencies to work together to simplify and streamline Federal grant-making processes. As a result of the government-wide streamlining initiative, the Office of Federal Financial Management (OFFM), Office of Management and Budget (OMB), recently published several notices and policy directives. The first notice, published at 68 FR 37370 (June 23, 2003), issued a policy directive to establish a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The policy directive required Federal agencies to organize announcement information in this standard format to make it easier for potential applicants to quickly find the information they needed. The second OFFM notice, published at 68 FR 37379 (June 23, 2003), established standard data elements for electronically posting synopses of Federal agencies' announcements of funding opportunities. The third notice, published at 68 FR 58146 (October 8, 2003), issued a policy directive to require Federal agencies to post synopses of their discretionary grant and cooperative agreement funding opportunity announcements on the Grants.gov Find module at *http://www.Grants.gov*.

The purposes of the Grants.gov FIND module are to provide potential applicants with: (1) Enough information about any funding opportunity to decide whether they are interested in viewing the full announcement; (2) information on how to obtain the full announcement; and (3) one common Web site for all Federal grant opportunities searchable by key word, date, Catalog of Federal Domestic Assistance number, or specific agency name.

This rule establishes the government-wide announcement format as the DOE format for announcements of financial assistance funding opportunities and the Grants.gov Internet site as the means of notifying the public of these opportunities. As part of its grants streamlining and simplification efforts, DOE began posting synopses of solicitations on the Grants.gov FIND module in March 2003. In accordance with the Department's financial assistance requirements, DOE has continued publishing notices of financial assistance solicitations in the **Federal Register** and will continue to publish such notices until the effective date of this regulation. This should provide adequate time for the financial assistance community to become acclimated to the Grants.gov Internet site. The ability to realize efficiencies through the use of electronic processes justifies DOE's reliance upon them. Therefore, after the effective date of this regulation, DOE will no longer provide duplicative notices in the **Federal Register** and instead will rely exclusively on notices posted on the Grants.gov Internet site to inform the public of DOE financial assistance funding opportunities.

II. Explanation of Changes

1. In section 600.8, "Solicitation," we have changed the title to "Program announcements" to be consistent with the OFFM policy guidance.

2. In section 600.8, paragraph (a) is revised to define program announcements.

3. In section 600.8, paragraph (a)(2), we deleted the requirement to publish either a copy or a notice of availability of a financial assistance solicitation in the **Federal Register** and in the Commerce Business Daily if potential applicants include for-profit organizations and there is potential for significant contracting opportunities. We also added a requirement to post synopses of announcements of funding opportunities at the Grants.gov Internet site.

4. In section 600.8, we have changed the title of paragraph (c) to "Announcement format" and added a requirement that DOE announcements comply with the government-wide standard announcement format. We have also deleted the list of items that must be included in a program announcement since OFFM policy guidance sets forth the format and content for each announcement.

5. Section 600.9, "Notice of program interest," is removed because the requirements for notices of program interest are now covered in section 600.8.

6. In section 600.10, paragraph (b), "program announcement" is substituted for the word "solicitation" to ensure consistency with the revisions to section 600.8.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

This regulatory action does not impose any new information collections subject to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's final rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516 note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of final rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) of OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

IV. Approval of the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, DC on February 11, 2004.

Richard H. Hopf,

Director, Office of Procurement and Assistance, Management/Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ Part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C.7101 *et seq*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.* unless otherwise noted.

§ 600.8 [Amended]

■ 2. Section 600.8 is amended by revising:
■ a. The section title.
■ b. Paragraph (a) introductory text.
■ c. Paragraph (a)(2).
■ d. Paragraph (c).

The revisions read as follows:

§ 600.8 Program announcements.

(a) *General.* Program announcements include any issuance used to announce funding opportunities that would result in the award of a discretionary grant or cooperative agreement, whether it is called a program announcement, program notice, solicitation, broad agency announcement, research announcement, notice of program interest, or something else.

(a)(1) * * *

(a)(2) DOE must post synopses of its program announcements and modifications to the announcements at the Grants.gov Internet site, using the standard data elements/format, except for:

(i) Announcements of funding opportunities for awards less than $25,000 for which 100 percent of eligible applicants live outside of the United States.

(ii) Single source announcements of funding opportunities which are specifically directed to a known recipient.

* * * * *

(c) Announcement format. DOE must use the government-wide standard format to publish program announcements of funding opportunities.

§ 600.9 [Removed and Reserved]

■ 3. Section 600.9 is removed and reserved.

§ 600.10 [Amended]

■ 4. Section 600.10 is amended in paragraph (b) by removing the word "solicitation" from the first sentence and adding the words "program announcement" in their place.

[FR Doc. 04–3608 Filed 2–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 764 and 766

[Docket No. 030909226–4048–02]

RIN 0694–AC92

Export Administration Regulations: Penalty Guidance in the Settlement of Administrative Enforcement Cases

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On September 17, 2003, the Bureau of Industry and Security (BIS) published a proposed rule regarding penalty guidance in the settlement of administrative enforcement cases (68 FR 54402). After considering public comments on that proposed rule, BIS is issuing this final rule, which discusses the comments received and the extent to which they were adopted. This final rule amends the Export Administration Regulations by incorporating guidance on how BIS makes penalty determinations when settling administrative enforcement cases under the Export Administration Regulations (EAR). This guidance also addresses related aspects of how BIS responds to violations of the EAR, such as charging decisions. This rule also amends other parts of the EAR to conform to this guidance.

DATES: This rule is effective February 20, 2004.

FOR FURTHER INFORMATION CONTACT: Roman W. Sloniewsky, Deputy Chief Counsel for Industry and Security, Room 3839, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

As an essential part of its administration of the export control system, BIS brings administrative enforcement actions for violations of the Export Administration Regulations (EAR). Many administrative enforcement cases are resolved through settlements between BIS and the respondent.

This rule incorporates guidance in the EAR—specifically, in a new Supplement No. 1 to part 766—on how BIS determines what penalty is appropriate for the settlement of an administrative enforcement case. This guidance identifies both general factors, such as the destination for the export and degree of willfulness involved in violations, and specific mitigating and aggravating factors which BIS typically takes into account in determining an appropriate penalty. The guidance also describes factors that BIS's Office of Export Enforcement (OEE) typically considers in describing whether a violation should be addressed in a warning letter, rather than in an administrative enforcement case. The guidance does not apply to antiboycott matters arising under part 760 of the EAR.

The rule also amends section 764.5(e) of the EAR to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case regarding violations reported in a voluntary self-disclosure under section 764.5, and what administrative sanctions to seek in settling such a case.

In part 766, the rule amends section 766.3(a) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760. The rule amends section 766.18 to add a new paragraph (f), stating that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under part 760.

This guidance is consistent with the objectives of section 223 of the Small Business Regulatory Enforcement Fairness Act (Title II, Pub. Law 104–121).

Response to Comments

BIS received five comments on the notice of proposed rulemaking published in the **Federal Register** on September 17, 2003 (68 FR 54402). BIS revised the final rule in various respects

to address concerns expressed by the commenters and to clarify certain provisions. The major concerns addressed in the comments and BIS's responses are as follows:

1. *General comments.*

a. Two commenters suggested that BIS provide guidance on compliance with the "catch-all" license requirements of the Enhanced Proliferation Control Initiative (EPCI), contained in part 744. BIS expects to address these issues through separate action.

b. Two commenters called for an express statement that BIS will follow the Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases ("Guidance"). BIS believes that the first paragraph of the Guidance and the references to the Guidance in new subparagraph (e) of Section 764.5 and the amended subparagraph (a) of Section 766.3 make clear that BIS intends to consider cases in accordance with the Guidance.

2. *Issuance of warning letters.* Several comments addressed the provision of Supplement No. 1 to part 766 concerning the issuance of warning letters.

a. Three commenters suggested that the proposed rule was ambiguous as to whether the criteria for issuing a warning letter were in the disjunctive, *i.e.*, whether a warning letter could be issued if some, but not all, of the listed criteria were present. BIS has revised this provision to state: "OEE often issues warning letters for an apparent violation of a technical nature, where good faith efforts to comply with the law and cooperate with the investigation are present, or where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of section 764.5, provided that no aggravating factors exist." Thus, in the absence of aggravating factors, a warning letter generally could be considered if one of the enumerated criteria is present.

b. Three commenters suggested that the reference in the proposed rule to violations "based on technicalities" was unclear. The corresponding language in the final rule refers to an apparent violation "of a technical nature." Because BIS believes that it should retain considerable discretion regarding whether a particular case should be resolved by a warning letter, BIS does not believe that a more specific formulation of this criterion is useful.

c. One commenter suggested an express statement that OEE would not issue a warning letter if it concludes that a violation did not take place. BIS has added such a statement to Section I.A. of the Guidance.

d. Two commenters suggested an express statement that a warning letter or administrative penalty will terminate BIS investigation and result in the closing of the case file. Although in practice BIS takes no further action in most such cases, BIS has not adopted this suggestion because it believes that in some circumstances investigation should continue after issuance of a warning letter or imposition of an administrative penalty, *e.g.*, when one set of violations is resolved while investigation of other violations is still underway.

e. Two commenters suggested the use of "education letters," in addition to warning letters. As suggested, "education letters" would not reflect a finding of an apparent violation, but would point out weaknesses in compliance efforts that, if not corrected, could result in future violations. In cases where BIS determines that a voluntary self-disclosure did not actually involve a violation, BIS typically informs the party of this determination. BIS concluded that it is unnecessary to establish a broader mechanism by which enforcement agents provide feedback on compliance efforts in the absence of a violation, and notes that it provides guidance for compliance efforts through other means, such as its Export Management System (EMS) Guidelines.

f. Two commenters suggested that voluntary self-disclosures should result in a "rebuttable presumption" that violations will be resolved with a warning letter. BIS concluded that no single factor should carry a presumption that no penalty will be sought. BIS notes that the submission of a voluntary self-disclosure that satisfies the requirements of Section 764.5 is designated a "great weight" mitigating factor in determining an appropriate penalty in the settlement of an administrative enforcement case.

3. *Treatment of high-volume, generally compliant exporters.* A number of comments suggested that certain aspects of the proposed rule inadequately took into account the circumstances of high-volume exporters with sound overall compliance practices who, despite their best efforts, occasionally violate the EAR. These comments stated that it was nearly impossible to reduce to zero the frequency of violations by parties who engage in a very large number of export transactions, especially insofar as they involve commodities that are subject to complex regulatory requirements. BIS considered these comments and determined that, as a general matter, it would be inappropriate to adopt guidance suggesting that, other things being equal, a violation by a large-volume exporter would be treated more leniently than an identical violation by a smaller business or a business that only occasionally engages in exporting. BIS also notes that an effective, high-quality compliance program is a "great weight" mitigating factor, and that a party who submits a voluntary self-disclosure satisfying the requirements of section 764.5 qualifies for a second "great weight" factor. Specific suggestions directed at the circumstance of the generally compliant, high-volume exporter are included in the response to the following comments:

a. Two commenters suggested that the discussion of multiple unrelated violations in section III.A of the Guidance should state that the number of such violations should be considered in the context of the overall volume of a party's export activities. BIS did not modify the Guidance in this regard; however, as stated in the Guidance, BIS will consider in appropriate cases a party's contention that information about the volume and nature of a party's export activities is "relevant to the application of this guidance" to such party's case. See Introduction to the Guidance.

b. Two commenters suggested adding a statement to the discussion of related violations to the effect that penalties for multiple violations will not be sought where they stem from the same underlying error or omission and the exporter exercised reasonable care to comply. While BIS did not adopt this suggestion; however, as stated in the Guidance, BIS will consider in appropriate cases a party's contention that the fact that multiple violations stemmed from the same error or omission is "relevant to the application of this guidance" to such party's case. *See* Introduction to the Guidance.

c. Two commenters suggested that what constitutes an "isolated occurrence" for purposes of mitigating factor 3 should be considered in the context of the party's overall volume of exports. BIS did not modify the Guidance in this regard; however, as stated in the Guidance, BIS will consider in appropriate cases a party's contention that information about the volume and extent of a party's export activities is "relevant to the application of this guidance" to such party's case. *See* Introduction to the Guidance.

4. *The effect of prior violations (mitigating factor 5 and aggravating factor 7).* Similarly, four commenters expressed concerns that the weighing of

prior violations under mitigating factor 5 and aggravating factor 7 unfairly disadvantaged high-volume, generally compliant exporters. Specific comments included:

a. Two commenters suggested that warning letters that resulted from prior voluntary self-disclosures should not be considered in applying these factors. BIS considered this suggestion, but determined that, rather than excluding such prior violations from consideration, it was more appropriate to afford them relatively less weight.

b. Two commenters suggested that the relevant time periods should be measured from the time that the violation occurred, rather than from the time of resolution (*e.g.*, settlement or a warning letter). A third commenter characterized the time periods in the proposed rule as "arbitrary" and suggested that the relevance of prior violations be viewed in the context of the volume and complexity of a party's export business. BIS did not adopt these suggestions. The time periods reflected in the proposed rule were carefully selected in an effort to balance the significance of a history of prior violations with a recognition that the relevance of certain violations diminishes with time.

c. Two commenters suggested elimination of consideration of violations that have not resulted in a settlement, an adjudicated administrative enforcement action, a criminal conviction or a warning letter. BIS did not adopt this suggestion because in certain circumstances it may be appropriate to consider such violations—for example, where it is desired to resolve one class of violations, but it is clear (*e.g.*, from a voluntary self-disclosure) that a party committed other, as yet unresolved, violations.

d. Three commenters had suggestions regarding the potential effect on an acquiring company of violations that an acquired company committed prior to the acquisition. BIS adopted in substance the suggestion of one commenter that, when the acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS the conduct that gave rise to such violations, BIS typically will not take such violations into account in settling other violations by the acquiring firm.

5. *Comments on other general, mitigating, and aggravating factors.*

a. Two commenters suggested adding a reference to "reasonable care" to the discussion of degree of wilfulness in Section III.A of the Guidance, to make clear that violations despite reasonable care to comply may be resolved more leniently than comparable violations resulting from negligence. BIS has not adopted the suggested revision, but notes that the principle that reasonable compliance efforts may be weighed in a respondent's favor is reflected in "great weight" mitigating factor 2.

a. BIS has adopted the suggestion of one commenter that the final rule expressly state that the listing of specific mitigating and aggravating factors is not exhaustive.

b. The comments included a number of suggestions for additional mitigating factors. Several of these suggested factors rest on considerations, especially compliance efforts, that are already reflected in mitigating factors in the proposed rule. Others refer to factors that may, in certain circumstances, be viewed as mitigating, but are unlikely to arise in a large number of cases (*e.g.*, exporter confusion arising from a jurisdictional dispute). BIS has not expressly incorporated these factors into the Guidance. However, since the listing of mitigating and aggravating factors is non-exhaustive, BIS will consider a party's contention that circumstances not specifically identified as mitigating should be given such effect in the context of a particular case.

c. One commenter suggested adding a new, "great weight" mitigating factor for steps taken to address compliance concerns raised by the violation, including efforts to prevent the reoccurrence of the violation. BIS has revised "great weight" mitigating factor 2 to include such steps.

d. Two commenters suggested that mitigating factor 4—that proper authorization would likely have been granted, if requested—should receive great weight. BIS has concluded that it would not generally afford this circumstance the same weight as the mitigating factors identified as "great weight," and therefore has not adopted this suggestion. BIS notes that many cases implicating mitigating factor 4 also will implicate mitigating factor 8 (that the violation was not likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.*, a license condition) were intended to protect against).

e. Two commenters suggested that mitigating factor 6 was unduly restrictive in its reference to an "exceptional" level of cooperation. BIS concluded that this language was appropriate, insofar as all parties are generally expected to cooperate with investigations.

f. Two commenters suggested revising mitigating factor 8, so that it would encompass any violation that did not fall under aggravating factor 3. BIS did not adopt this suggestion because it concluded that it would better serve the objectives of this Guidance to retain a middle category of violations that do not fall within mitigating factor 8 or aggravating factor 3, *i.e.*, that may have involved harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.*, a license condition) were intended to protect against, but did not, in purpose or effect, substantially implicate national security or other essential interests protected by the U.S. export control system.

g. One commenter suggested a new mitigating factor for valid legal defenses, such as First Amendment or other constitutional claims. BIS did not add such a specific mitigating factor, but notes that the Guidance states that BIS "will give serious consideration to information and evidence that parties believe are relevant * * * to whether they have affirmative defenses to potential charges."

h. Two commenters suggested revising aggravating factor 1 to state that discovering a past violation, taking corrective action, but not self-disclosing the violation would not constitute deliberate concealment for purposes of this factor. BIS has not revised the Guidance in this regard, but observes that it would not consider failure to self-disclose a violation, in and of itself, a circumstance that would implicate aggravating factor 1.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0694–0058, and carries an annual burden hour estimate of 800 hours and a cost to the public of approximately $32,000.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring a notice of

proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a general statement of policy and rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. However, in view of the importance of this rule, which represents the first comprehensive statement of BIS's approach toward these issues, BIS sought and considered public comments before issuing a final rule. Those public comments, and the extent to which BIS adopted them, are summarized above. This regulation is now being issued in final form.

List of Subjects

15 CFR Part 764

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Foreign trade.

■ Accordingly, this rule amends part 764 and part 766 of the EAR as follows:

■ 1. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of August 7, 2003 (68 FR 47833, August 11, 2003).

PART 764—[AMENDED]

■ 2. Section 764.5, paragraph (e) is revised to read as follows:

§ 764.5 Voluntary self-disclosure.

* * * * *

(e) *Criteria.* Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

■ 3. The authority citation for 15 CFR part 766 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of August 7, 2003 (68 FR 47833; August 11, 2003).

PART 766—[AMENDED]

■ 4. Section 766.3, paragraph (a) is revised to read as follows:

§ 766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, or such other Department of Commerce official as may be designated by the Assistant Secretary of Commerce for Export Enforcement, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BIS. Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760 of the EAR. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under part 764 of the EAR. The charging letter will inform the respondent that failure to answer the charges as provided in § 766.6 of this part will be treated as a default under § 766.7 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative who has a power of attorney to represent the respondent. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. BIS may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

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■ 5. Section 766.18 is amended to add a new paragraph (f) to read as follows:

§ 766.18 Settlement.

* * * * *

(f) Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under part 760 of the EAR.

■ 6. Part 766 is amended to add a new Supplement No. 1 to read as follows:

SUPPLEMENT NO. 1 TO PART 766—GUIDANCE ON CHARGING AND PENALTY DETERMINATIONS IN SETTLEMENT OF ADMINISTRATIVE ENFORCEMENT CASES

Introduction

This Supplement describes how BIS responds to violations of the Export Administration Regulations (EAR) and, specifically, how BIS makes penalty determinations in the settlement of civil administrative enforcement cases under part 764 of the EAR. This guidance does not apply to enforcement cases for antiboycott violations under part 760 of the EAR.

Because many administrative enforcement cases are resolved through settlement, the process of settling such cases is integral to the enforcement program. BIS carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and BIS's objective to achieve in each case an appropriate level of penalty and deterrent effect. In settlement negotiations, BIS encourages parties to provide, and will give serious consideration to, information and evidence that parties believe are relevant to the application of this guidance to their cases, to whether a violation has in fact occurred, or to whether they have an affirmative defense to potential charges.

This guidance does not confer any right or impose any obligation regarding what penalties BIS may seek in litigating a case or what posture BIS may take toward settling a case. Parties do not have a right to a settlement offer, or particular settlement terms, from BIS, regardless of settlement postures BIS has taken in other cases.

I. Responding to Violations

The Office of Export Enforcement (OEE), among other responsibilities, investigates possible violations of the Export Administration Act of 1979, as amended, the EAR, or any order, license or authorization issued thereunder. When it appears that such a violation has occurred, OEE investigations may lead to a warning letter or a civil enforcement proceeding. A violation may also be referred to the Department of Justice for criminal prosecution. The type of enforcement action initiated by OEE will depend primarily on the nature of the violation.

A. *Issuing a warning letter:* Warning letters represent OEE's conclusion that an apparent violation has occurred. In the exercise of its discretion, OEE may determine in certain instances that issuing a warning letter, instead of bringing an administrative enforcement proceeding, will achieve the appropriate enforcement result. A warning letter will fully explain the apparent violation and urge compliance. OEE often issues warning letters for an apparent violation of a technical nature, where good faith efforts to comply with the law and cooperate with the investigation are present, or where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of §764.5 of the EAR, provided that no aggravating factors exist.

OEE will not issue a warning letter if it concludes, based on available information, that a violation did not occur. A warning letter does not constitute a final agency determination that a violation has occurred.

B. *Pursuing an administrative enforcement case:* The issuance of a charging letter under §766.3 of the EAR initiates an administrative enforcement proceeding. Charging letters may be issued when there is reason to believe that a violation has occurred. Cases may be settled before or after the issuance of a charging letter. *See* §766.18 of the EAR. BIS prepares a proposed charging letter when a case is settled before issuance of an actual charging letter. *See* section 766.18(a). In some cases, BIS also sends a proposed charging letter to a party in the absence of a settlement agreement, thereby informing the party of the violations that BIS has reason to believe occurred and how BIS expects that those violations would be charged.

C. *Referring for criminal prosecution:* In appropriate cases, BIS may refer a case to the Department of Justice for criminal prosecution, in addition to pursuing an administrative enforcement action.

II. Types of Administrative Sanctions

There are three types of administrative sanctions under §764.3(a) of the EAR: a civil penalty, a denial of export privileges, and an exclusion from practice before BIS. Administrative enforcement cases are generally settled on terms that include one or more of these sanctions.

A. *Civil penalty:* A monetary penalty may be assessed for each violation. The maximum amount of such a penalty per violation is stated in §764.3(a)(1), subject to adjustments under the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. 2461, note (2000)), which are codified at 15 CFR 6.4.

B. *Denial of export privileges:* An order denying a party's export privileges may be issued, as described in §764.3(a)(2) of the EAR. Such a denial may extend to all export privileges, as set out in the standard terms for denial orders in Supplement No. 1 to part 764, or may be narrower in scope (*e.g.*, limited to exports of specified items or to specified destinations or customers).

C. *Exclusion from practice:* Under §764.3(a)(3) of the EAR, any person acting as an attorney, accountant, consultant, freight forwarder or other person who acts in a representative capacity in any matter before BIS may be excluded from practicing before BIS.

III. How BIS Determines What Sanctions Are Appropriate in a Settlement

A. *General Factors:* BIS usually looks to the following basic factors in determining what administrative sanctions are appropriate in each settlement:

Degree of Willfulness: Many violations involve no more than simple negligence or carelessness. In most such cases, BIS typically will seek a settlement for payment of a civil penalty (unless the matter is resolved with a warning letter). In cases involving gross negligence, willful blindness to the requirements of the EAR, or knowing or willful violations, BIS is more likely to seek a denial of export privileges or an exclusion from practice, and/or a greater monetary penalty than BIS would otherwise typically seek. While some violations of the EAR have a degree of knowledge or intent as an element of the offense, *see, e.g.*, §764.2(e) of the EAR (acting with knowledge of a violation) and §764.2(f) (possession with intent to export illegally), BIS may regard a violation of any provision of the EAR as knowing or willful if the facts and circumstances of the case support that conclusion. In deciding whether a knowing violation has occurred, BIS will consider, in accordance with Supplement No. 3 to part 732 of the EAR, the presence of any red flags and the nature and result of any inquiry made by the party. A denial or exclusion order may also be considered even in matters involving simple negligence or carelessness, particularly if the violations(s) involved harm to national security or other essential interests protected by the export control system, if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty or if the nature and extent of the violation(s) indicate that a denial or exclusion order is necessary to prevent future violations of the EAR.

Destination Involved: BIS is more likely to seek a greater monetary penalty and/or denial of export privileges or exclusion from practice in cases involving:

(1) Exports or reexports to countries subject to anti-terrorism controls, as described at §742.1(d) of the EAR.

(2) Exports or reexports to destinations particularly implicated by the type of control that applies to the item in question—for example, export of items subject to nuclear controls to a country with a poor record of nuclear non-proliferation.

Violations involving exports or reexports to other destinations may also warrant consideration of such sanctions, depending on factors such as the degree of willfulness involved, the nature and extent of harm to national security or other essential interests protected by the export control system, and what level of sanctions are determined to be necessary to deter or prevent future violations of the EAR.

Related Violations: Frequently, a single export transaction can give rise to multiple violations. For example, an exporter who mis-classifies an item on the Commerce Control List may, as a result of that error, export the item without the required export license and submit a Shipper's Export Declaration (SED) that both misstates the applicable Export Control Classification Number (ECCN) and erroneously identifies the export as qualifying for the designation "NLR" (no license required). In so doing, the exporter committed three violations: one violation of § 764.2(a) of the EAR for the unauthorized export and two violations of § 764.2(g) for the two false statements on the SED. It is within the discretion of BIS to charge three separate violations and settle the case for a penalty that is less than would be appropriate for three unrelated violations under otherwise similar circumstances, or to charge fewer than three violations and pursue settlement in accordance with that charging decision. In exercising such discretion, BIS typically looks to factors such as whether the violations resulted from knowing or willful conduct, willful blindness to the requirements of the EAR, or gross negligence; whether they stemmed from the same underlying error or omission; and whether they resulted in distinguishable or separate harm.

Multiple Unrelated Violations: In cases involving multiple unrelated violations, BIS is more likely to seek a denial of export privileges, an exclusion from practice, and/or a greater monetary penalty than BIS would otherwise typically seek. For example, repeated unauthorized exports could warrant a denial order, even if a single export of the same item to the same destination under similar circumstances might warrant just a monetary penalty. BIS takes this approach because multiple violations may indicate serious compliance problems and a resulting risk of future violations. BIS may consider whether a party has taken effective steps to address compliance concerns in determining whether multiple violations warrant a denial or exclusion order in a particular case.

Timing of Settlement: Under § 766.18, settlement can occur before a charging letter is served, while a case is before an administrative law judge, or while a case is before the Under Secretary for Industry and Security under § 766.22. However, early settlement—for example, before a charging letter has been served—has the benefit of freeing resources for BIS to deploy in other matters. In contrast, for example, the BIS resources saved by settlement on the eve of an adversary hearing under § 766.13 are fewer, insofar as BIS has already expended significant resources on discovery, motions practice, and trial preparation. Because the effective implementation of the U.S. export control system depends on the efficient use of BIS resources, BIS has an interest in encouraging early settlement and may take this interest into account in determining settlement terms.

Related Criminal or Civil Violations: Where an administrative enforcement matter under the EAR involves conduct giving rise to related criminal or civil charges, BIS may take into account the related violations, and their resolution, in determining what administrative sanctions are appropriate under part 766. A criminal conviction indicates serious, willful misconduct and an accordingly high risk of future violations, absent effective administrative sanctions. However, entry of a guilty plea can be a sign that a party accepts responsibility for complying with the EAR and will take greater care to do so in the future. In appropriate cases where a party is receiving substantial criminal penalties, BIS may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, BIS might seek greater administrative sanctions in an otherwise similar case where a party is not subjected to criminal penalties. The presence of a related criminal or civil disposition may distinguish settlements among civil penalty cases that appear otherwise to be similar. As a result, the factors set forth for consideration in civil penalty settlements will often be applied differently in the context of a "global

settlement" of both civil and criminal cases, or multiple civil cases, and may therefore be of limited utility as precedent for future cases, particularly those not involving a global settlement.

B. Specific Mitigating and Aggravating Factors: In addition to the general factors described in Section III.A. of this Supplement, BIS also generally looks to the presence or absence of the following mitigating and aggravating factors in determining what sanctions should apply in a given settlement. These factors describe circumstances that, in BIS's experience, are commonly relevant to penalty determinations in settled cases. However, this listing of factors is not exhaustive and, in particular cases, BIS may consider other factors that may indicate the blameworthiness of a party's conduct, the actual or potential harm associated with a violation, the likelihood of future violations, and/or other considerations relevant to determining what sanctions are appropriate.

Where a factor admits of degrees, it should accordingly be given more or less weight. Thus, for example, one prior violation should be given less weight than a history of multiple violations, and a previous violation reported in a voluntary self disclosure by an exporter whose overall export compliance efforts are of high quality should be given less weight than previous violation(s) not involving such mitigating factors.

Some of the mitigating factors listed in this section are designated as having "great weight." When present, such a factor should ordinarily be given considerably more weight than a factor that is not so designated.

Mitigating Factors

1. The party made a voluntary self-disclosure of the violation, satisfying the requirements of § 764.5 of the EAR. All voluntary self-disclosures meeting the requirements of § 764.5 will be afforded "great weight," relative to other mitigating factors not designated as having "great weight." Voluntary self-disclosures receiving the greatest mitigating effect will typically be those concerning violations that no BIS investigation in existence at the time of the self-disclosure would have been reasonably likely to discover without the self-disclosure. (GREAT WEIGHT)

2. The party has an effective export compliance program and its overall export compliance efforts have been of high quality. In determining the presence of this factor, BIS will take account of the extent to which a party complies with the principles set forth in BIS's Export Management System (EMS) Guidelines. Information about the EMS Guidelines can be accessed through the BIS Web site at *www.bis.doc.gov*. In this context, BIS will also consider whether a party's export compliance program uncovered a problem, thereby preventing further violations, and whether the party has taken steps to address compliance concerns raised by the violation, including steps to prevent reoccurrence of the violation, that are reasonably calculated to be effective. (GREAT WEIGHT)

3. The violation was an isolated occurrence or the result of a good-faith misinterpretation.

4. Based on the facts of a case and under the applicable licensing policy, required authorization for the export transaction in question would likely have been granted upon request.

5. Other than with respect to antiboycott matters under part 760 of the EAR:

(a) The party has never been convicted of an export-related criminal violation;

(b) In the past five years, the party has not entered into a settlement of an export-related administrative enforcement case with BIS or another U.S. Government agency or been found liable in an export-related administrative enforcement case brought by BIS or another U.S. Government agency;

(c) In the past three years, the party has not received a warning letter from BIS; and

(d) In the past five years, the party has not otherwise violated the EAR.

Where necessary to effective enforcement, the prior involvement in export violation(s) of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied. When an acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS conduct that gave rise to violations by an acquired business before the acquisition, BIS typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

6. The party has cooperated to an exceptional degree with BIS efforts to investigate the party's conduct.

7. The party has provided substantial assistance in BIS investigation of another person who may have violated the EAR.

8. The violation was not likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.*, a license condition) were intended to protect against; for example, a false statement on an SED that an export was "NLR," when in fact a license requirement was applicable, but a license exception was available.

9. At the time of the violation, the party: (1) Had little or no previous export experience; and (2) Was not familiar with export practices and requirements. (Note: The presence of only one of these elements will not generally be considered a mitigating factor.)

Aggravating Factors

1. The party made a deliberate effort to hide or conceal the violation(s). (GREAT WEIGHT)

2. The party's conduct demonstrated a serious disregard for export compliance responsibilities. (GREAT WEIGHT)

3. The violation was significant in view of the sensitivity of the items involved and/or the reason for controlling them to the destination in question. This factor would be present where the conduct in question, in purpose or effect, substantially implicated national security or other essential interests protected by the U.S. export control system, in view of such factors as the destination and sensitivity of the items involved. Such conduct might include, for example, violations of controls based on nuclear, biological, and chemical weapon proliferation, missile technology proliferation, and national security concerns, and exports proscribed in part 744 of the EAR. (GREAT WEIGHT)

4. The violation was likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.*, a license condition) are principally intended to protect against, *e.g.*, a false statement on an SED that an export was destined for a non-embargoed country, when in fact it was destined for an embargoed country.

5. The quantity and/or value of the exports was high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value.

6. The presence in the same transaction of concurrent violations of laws and regulations, other than those enforced by BIS.

7. Other than with respect to antiboycott matters under part 760 of the EAR:

(a) The party has been convicted of an export-related criminal violation;

(b) In the past five years, the party has entered into a settlement of an export-related administrative enforcement case with BIS or another U.S. Government agency or has been found liable in an export-related administrative enforcement case brought by BIS or another U.S. Government agency;

(c) In the past three years, the party has received a warning letter from BIS; or

(d) In the past five years, the party otherwise violated the EAR.

Where necessary to effective enforcement, the prior involvement in export violation(s) of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied. When an acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS conduct that gave rise to violations by an acquired business before the acquisition, BIS typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

8. The party exports as a regular part of the party's business, but lacked a systematic export compliance effort.

In deciding whether and what scope of denial or exclusion order is appropriate, the following factors are particularly relevant: the presence of mitigating or aggravating factors of great weight; the degree of willfulness involved; in a business context, the extent to which senior management participated in or was aware of the conduct in question; the number of violations; the existence and seriousness of prior violations; the likelihood of future violations (taking into account relevant export compliance efforts); and whether a monetary penalty can be expected to have a sufficient deterrent effect.

IV. How BIS Makes Suspension and Deferral Decisions

A. *Civil Penalties:* In appropriate cases, payment of a civil monetary penalty may be deferred or suspended. *See* § 764.3(a)(1)(iii) of the EAR. In determining whether

suspension or deferral is appropriate, BIS may consider, for example, whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all of the circumstances, such suspension or deferral is necessary to make the impact of the penalty consistent with the impact of BIS penalties on other parties who committed similar violations.

B. *Denial of Export Privileges and Exclusion from Practice:* In deciding whether a denial or exclusion order should be suspended, BIS may consider, for example, the adverse economic consequences of the order on the respondent, its employees, and other parties, as well as on the national interest in the competitiveness of U.S. businesses. An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future export control violations are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.

Dated: February 11, 2004.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

[FR Doc. 04–3639 Filed 2–19–04; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7625–1]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Wheeler Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is publishing a direct final notice of deletion of the Wheeler Pit, Superfund Site (Site), located in Janesville, Wisconsin, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Wisconsin, through the Wisconsin Department of Natural Resources, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

DATES: This direct final notice of deletion will be effective April 20, 2004 unless EPA receives adverse comments by March 22, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: *Comments:* Comments may be mailed to: Darryl Owens, Remedial Project Manager (RPM) at (312) 886–7089, *Owens.Darryl@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov*, U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604, (mail code: SR–6J) or at 1–800–621–8431.

Information Repositories

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: EPA Region V Library, 77 W. Jackson, Chicago, Il 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Hedberg Public Library, 316 S. Main Street, Janesville, Wisconsin 53545, Monday through Friday 9 a.m. to 9 p.m., Saturday 9 a.m. to 5 p.m. and Sunday 1 p.m to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Darryl Owens, Remedial Project Manager at (312) 886–7089, *Owens.Darryl@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov* or 1–800–621–8431, (SR–6J), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region V is publishing this direct final notice of deletion of the Wheeler Pit, Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective April 20, 2004 unless EPA receives adverse comments by March 22, 2004 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Wheeler Pit Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a

need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of this Site:

(1) The EPA consulted with Wisconsin on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Wisconsin concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion a notice of intent to delete is published today in the "Proposed Rules" section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site, and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with a decision on the deletion based on the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting this Site from the NPL:

Site Location

The Site is located in rural La Prairie Township approximately 1½ miles east of the City of Janesville, Wisconsin, directly northwest of the intersection of County Highway O (Old Delevan Road) and County Highway J. The Site is within a physical depression approximately 50 feet deep and spanning an area of approximately 35 acres, which previously operated as a sand and gravel pit by the Southeast Railway Company and the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (CMC). In 1956, General Motors Corporation (GM) leased a portion of the pit area from the railroad for waste disposal. This portion of the pit area is the Wheeler Pit Superfund Site and is a 3.82 acre parcel in the southeast portion of Wheeler Pit which was used as a disposal area for industrial wastes for approximately 18 years.

Site History

The Wheeler pit property was purchased in 1900 by the Janesville and southeastern Railway Company, predecessor in interest to the Chicago, Milwaukee, St. Paul and Pacific Railroad, which filed for bankruptcy in the 1970s. Upon completion of the bankruptcy proceedings, CMC Real Estate Corporation, successor to the Railroad, acquired ownership of the property on which the site is located. In early 1990, CMC Real Estate Corporation reformed to become CMC corporation. In the 1990s CMC was the owner of the property on which the site is located. The Wheeler Pit property was originally bought to provide sand and gravel for the Railroad. It has been reported that the Railroad also used Wheeler Pit for refuse disposal.

In, 1956, General Motors Corporation (GM) leased a 3.82 acre portion of the pit from the Railroad as a general waste disposal site. From 1956 to 1960, GM disposed of general refuse at the Site. From 1960 through 1974, GM disposed of paint spray booth sludges, residue from the part hanger stripping system, clarifier sludges and powerhouse coal ashes from its automobile assembly plant in Janesville. The disposal site was reported to be approximately 400 feet long, 250 feet wide and 8 feet deep. An estimated 22.3 million gallons of organic and inorganic sludges were disposed of at the site, as reported by GM to the EPA in GM's Notification of Hazardous Waste Site form submitted in June 1981.

At the site, waste was disposed of by depositing it within a diked area and allowing it to spread freely. The material was quite dense, so that compaction equipment was not used. The waste was deposited in layers, alternating between layers of sludge and layers of coal ash. Trucks were then able to drive over the previously filled area. The dike, which contained the materials, was located on the north and west sides of the disposal area. In August 1981, some liquid seepage was noticed on the ground surface outside the disposal area. The Remedial Investigation (RI) results showed that the ash/waste boundary extended beyond the original disposal boundary to the north and northwest, indicating that the waste spilled over the dike to some extent during the active life of the site.

At the request of La Prairie Township, disposal at the Site was discontinued in 1974. The disposal area was covered and closed during the fall of 1974 and summer of 1975 in general accordance with guidelines provided by the Wisconsin Department of Natural Resources (WDNR). In a letter dated May 6, 1974, WDNR required that GM implement a groundwater monitoring program; generate a site topographic map, stabilize surface water runoff, and grade, cover and re-vegetate the site.

Groundwater monitoring was performed by GM on an irregular basis after closure in 1974. In response to concerns concerning potential groundwater quality impacts related to waste disposal practices at the site, WDNR and GM sampled on-site monitor wells and certain private water supply wells in April 1981. Elevated levels of trichloroethylene, chromium, zinc and barium were noted in both WDNR and GM samples from the on-site monitoring wells. Results from these analyses and GM's January 1981 sampling round were used by EPA in the Hazard Ranking System (HRS) evaluation of the site performed in April 1983. The site was placed on the National Priorities List on September 21, 1984.

Remedial Investigation and Feasibility Study (RI/FS)

RI field activities began in September 1988 and included two phases. Activities included digging and sampling of four test pits, installation of six monitor wells (three nests), hydraulic conductivity testing, groundwater level monitoring and groundwater sampling. Phase II activities included three additional test pits, an electromagnetic survey to help determine the waste boundary and volume, waste/soil borings and sampling, shallow soil borings, surface soil sampling, four additional monitoring wells (two nests), and a second round of hydraulic conductivity testing and groundwater sampling. The RI Report describing these activities was finalized on March 1, 1990. An Endangerment Assessment was also

prepared and was included as part of the RI Report.

The RI found that the waste/fill area covers approximately 3.4 acres and ranges from 0–23 feet in thickness with the deepest part of the waste/fill area being approximately 10 feet above the groundwater table. Sampling of the waste found the following:

—Toluene, ethylbenzene, xylenes at concentrations ranging from 3300 parts per billion (ppb) to 508,000 ppb. These compounds are volatile organic compounds (VOCs).

—Phthalates ranging from 450 ppb to 630,000 ppb. Phthalates are semi-volatile compounds associated with plastics and plastic making processes.

—Polynuclear Aromatic Hydrocarbons (PAHs) ranging from 9520 ppb to 152,000 ppb. PAHs are semi-volatile compounds derived from coal and oil tars and the incomplete combustion of carbonaceous materials.

—Nine metals were detected at elevated concentrations including antimony, barium, copper, cadmium, chromium, lead, mercury, nickel and zinc.

Groundwater sampling found several chlorinated benzene compounds 1.4 dichlorobenzene, 1,3 dichlorobenzene and chlorobenzene in down gradient monitoring wells. The 1,4 dichlorobenzene concentration exceeded the proposed Wisconsin Preventive Action Limit (PAL) groundwater standard. The sampling found that the metals arsenic, chromium, iron and manganese exceeded PALs and in the case of iron and manganese, also exceed Wisconsin Enforcement Standards (ES).

A risk assessment was conducted and it was determined that there was a possible carcinogenic (cancer causing) risk from groundwater if a well was placed on the site and a noncarcinogenic risk to a construction worker from inhalation of VOCs while digging in the waste. It was also determined that there was a potential for erosion to continue to degrade the present soil cover and if that occurred, a trespasser at the site might encounter a risk similar to a construction worker.

Record of Decision Findings

The ROD for the Wheeler Pit site was signed on September 28, 1990. The number of alternatives considered for groundwater was reduced in the Feasibility Study based on the levels of contaminants detected in the groundwater and the limited areal extent of contamination. The alternatives to address the ash/waste contamination were source control actions which relied on natural attenuation to remedy the groundwater. Remedial action objectives identified in the ROD for source control and groundwater contamination were:

(1) Reduce the threat of direct contact with ash/waste contamination.

(2) Reduce the amount of infiltration of water into the waste which could lead to further groundwater contamination.

(3) Achieve Wisconsin PALs where technically and economically feasible.

The major components of the source control remedy selected in the ROD include the following:

(1) A muti-layer RCRA Subtitle D cap consisting of the following layers from top to bottom: a 6-inch thick topsoil layer; a frost protective soil layer at least 18 inches thick; a drainage layer and a 2-foot clay layer.

(2) Consolidation under the cap of 400 cubic yards of waste and soil from the property north of the site.

(3) Institutional controls including deed restrictions and landfill development restrictions.

The groundwater remedy consisted of monitoring wells to assess the projected decrease in groundwater contamination. Monitoring wells were to be sampled for at least 30 years. Private wells located down-gradient of the site were also to be monitored to assess potential impacts to human health.

Characterization of Remaining Risk

No additional response action(s) is required at the Wheeler Pit. Those areas associated with groundwater and source control have been adequately addressed by the response actions already taken. Wheeler Pit meets all site completion requirements specified under OSWER Directive 9320.2–09A–P (Close Out Procedures for National Priorities List Sites). Current site conditions are protective of human health and the environment, both for the source control and the groundwater. Cleanup objectives set forth in the RODs for this site and in the Consent Order have been achieved.

Response Actions

EPA gave notice to proceed with the Remedial Action on May 21, 1992. A contract for remedial construction activities was awarded April 30, 1992 and on-site construction began on June 8, 1992. Remedial construction included the following activities:

- Consolidation of approximately 36,400 cubic yards of material, including waste from property north of the site;
- Installation of a Wisconsin Administrative Code (WAC) No. 504 solid waste cap over the waste and consolidated material, which included 2 feet of compacted clay, 1 foot gravel drainage layer with geotexilte filter fabric, 1 and ½ foot of soil for frost protection and to serve as a rooting zone and 6-inches of topsoil;
- Access road construction;
- Retention basin construction;
- Perimeter drainage swale construction;
- Site clearing, stump removal and existing access road abandonment;
- Installation and also abandonment of groundwater monitoring wells and implementation of a long-term groundwater monitoring program.

A pre-final inspection was performed on October 27, 1992 and construction was found to be substantially complete. A Construction Completion Report was submitted by the PRPs in December 1992 and U.S. EPA subsequently issued a Preliminary Close Out Report on December 29, 1992.

An Explanation of Significant Differences (ESD) was signed on June 16, 2003. The purpose of the ESD was to eliminate manganese as a site contaminant of concern from the groundwater cleanup remedy selected by EPA in its September 28, 1990 ROD. The elimination of manganese from the site contaminants of concern was recommended in the September 18, 2002 Five Year Review for the Wheeler Pit Superfund site.

Cleanup Standards

The goal of the groundwater action will be to attain the groundwater clean-up standards at the waste boundary of Wheeler Pit, which is the suggested NCP point of compliance for groundwater. The clean-up goals which have been established are state of Wisconsin PALS. In the second Five-Year that was signed on September 18, 2002, with regard to the review of chemical-specific ARARs, the standards for four of the five chemicals of concern in the groundwater which exceeded PALs at the time of the 1990 ROD (1,4 dichlorobenzene, arsenic, iron and manganese) have not changed. The PALs remain at 15 micrograms per liter (µg/l) for 1,4 dichlorobenzene, 5 µg/l for arsenic, 150 µg/l for iron, and 25 µg/l for manganese. The PAL for chromium has become less stringent at 10 µg/l versus 5 µg/l at the time of the ROD signing. Manganese is the only site contaminant of concern which exceeds PALs at this time. An ESD was signed on June 16, 2003 which eliminated manganese as a site contaminant of concern.

Operation and Maintenance

General Motors is conducting operation and maintenance activities for

the landfill and the long-term groundwater monitoring in accordance with the Unilateral Administrative Order. The primary activities associated with the O & M include the following:

- Routine mowing of the landfill cover;
- Visual inspection of the landfill cover for damage due to erosion, washouts, settling, growth of trees or large plants, growth of noxious weeds and burrowing animals;
- Inspection of monitoring wells for well casing damage, surface seal damage, missing or broken locks, vandalism, well screen damage and sediment;
- Inspection of the landfill storm water control system which consists of perimeter swales, roadside swales, culverts, and the storm water retention pond. The inspection includes inspecting for damage from erosion, sediment accumulation in swales or culverts, settlement, riprap integrity, distressed vegetation, growth of trees or large plants, growth of noxious weeds and burrowing animals;
- Inspection of perimeter fence for damage from cuts or sagging, bent or damaged fence gates and posts, excessive gaps between ground and fence bottom, missing locks and signs, cut barbed wire and tree branches encroaching on the fence and;
- Inspection of the site access road for damage due to erosion, settlement or grading activities.

Five-Year Review

A second five-year review for the Wheeler Pit was conducted on September 18, 2002. The report recommended that manganese should be deleted from the site contaminants of concern. An Explanation of Significant Differences (ESD) to the ROD decision document was signed on June 16, 2003. The ESD also established the extent and frequency of future groundwater monitoring to be performed at the site.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of this Site from the NPL are available to the public in the information repositories.

V, Deletion Action

The EPA, with concurrence of the State of Wisconsin, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective April 20, 2004 unless EPA receives adverse comments by March 22, 2004. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and, as appropriate, continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 4, 2004.

Thomas V. Skinner,

Regional Administrator, Region V.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Wisconsin "WI" by removing the entry for "Wheeler Pit, La Prairie Township."

[FR Doc. 04–3599 Filed 2–19–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030819206–4051–02; I.D. 020204A]

RIN 0648 AR42

Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act

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

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in the following American Fisheries Act (AFA)-related amendments: Amendment 61 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area, Amendment 61 to the FMP for Groundfish of the Gulf of Alaska, Amendment 13 to the FMP for BSAI King and Tanner Crab, and Amendment 8 to the FMP for the Scallop Fishery off Alaska (collectively referred to as Amendments 61/61/13/8), and issues a final rule to make effective the collections of information contained in those amendments. The intent of this final rule is to inform the public of the effective date of the collection of information requirements.

DATES: Sections 679.28(c)(3), 679.28(c)(4)(iii), 679.28(g), 679.61(b), and 679.63(c)(2) published at 67 FR 79692 (December 30, 2002) are effective on March 22, 2004.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: (907)586–7247, e-mail: *lori.durall@noaa.gov*, and to David Rostker, OMB, e-mail: *DavidlRostker@omb.eop.gov*, or fax: (202)395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, (907)586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: A final rule implementing the measures contained in Amendments 61/61/13/8 was published in the **Federal Register** on December 30, 2002 (67 FR 79692), and most of the measures were effective

January 29, 2003. However, because OMB approval of the reporting requirements contained in these amendments had not yet been received as of the effective date of the rule, the effective date of the collection of information requirements contained in the amendments was delayed.

OMB approval for some of the collection of information requirements was received on July 14, 2003, and NMFS announced their effective date in the **Federal Register** on August 25, 2003 (68 FR 51146). OMB approval for the remaining reporting requirements was received on December 29, 2003. Consequently, this rule makes the following requirements effective: *OMB 0648–0330, Scale and Catch Weighing Requirements.* Approval of this collection included: § 679.28(c)(3) printed scale weights, § 679.28(c)(4)(iii) certified test weights, § 679.28(g) catch monitoring and control plan requirements, and § 679.63(c)(2) notification of observer of offloading schedule. *OMB 0648–0393, American Fisheries Act (AFA) Vessel and Processor Permit Applications.* Approval of this collection included: § 679.61(b) fishery cooperative responsibility.

A complete explanation of the requirements imposed by these regulations and the rationale for them was provided in the proposed rule for Amendment 61/61/13/8 (66 FR 65028, December 17, 2001) and the final rule for Amendment 61/61/13/8 (67 FR 79692, December 30, 2002).

Classification

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA that have been approved by OMB under control number 0648–0330. The estimated time per response to print scale weights is 45 minutes. A requirement to maintain certified test weights for use by NMFS when approving a scale is incorporated into the at-sea scale approval, which is estimated at 6 minutes. The estimated time per response to create an Inshore Processors Catch Monitoring and Control Plan (CMCP) is 40 hours. The requirement for the plant manager or plant liaison to notify the observer of the offloading schedule for each delivery of BSAI pollock is estimated to be 5 minutes.

This rule contains collection-of-information requirements subject to the PRA that have been approved by OMB under control number 0648–0393. The responsibility of the cooperative and individual members of the cooperative to comply with regulations at 50 CFR part 679 is included in the annual AFA inshore catcher vessel cooperative permit application, estimated at 20 hours.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105 277; Sec. 3027, Pub. L. 106 31, 113 Stat. 57.

Dated: February 13, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 04–3752 Filed 2–19–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 34
Friday, February 20, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW206A and PW206E Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney Canada (PWC) PW206A and PW206E turboshaft engines. That AD currently requires initial and repetitive borescope inspections of compressor turbine and power turbine blades for blade axial shift, and replacement of blade retaining rivets and certain rotor air seals as terminating action for the repetitive borescope inspections.

This proposed AD would require the same actions but needs to clarify the extent of engine disassembly that triggers the required part replacements. This proposed AD is prompted by reports of engine shutdowns and emergency landings due to severe vibration, resulting in exhaust gases escaping from the engine-to-exhaust nozzle interface, thereby triggering in-flight engine fire warnings. We are proposing this AD to prevent turbine blade axial shift, which could cause high levels of vibration, loss of engine torque, in-flight engine shutdown, and loss of the airframe exhaust duct.

DATES: We must receive any comments on this proposed AD by April 20, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–25–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 identified in this proposed AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1.

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

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–25–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

On August 4, 2003, the FAA issued airworthiness directive (AD) 2003–16–10, Amendment 39–13263 (68 FR 48544, August 14, 2003), to require initial and repetitive borescope inspections of compressor turbine and power turbine blades for blade axial shift. That AD also required replacement of blade retaining rivets and certain rotor air seals as terminating action for the repetitive borescope inspections. That action was prompted by reports of engine shutdowns and emergency landings due to severe vibration and drops in engine torque, and an increase in internal engine temperature, triggering in-flight engine fire warnings. That condition, if not corrected, could result in turbine blade axial shift, which could cause high levels of vibration, loss of engine torque, in-flight engine shutdown, and loss of the airframe exhaust duct.

Comments Received Since AD 2003–16–10 Was Issued

Since that final rule; request for comments was issued, we received two comments on that AD. We have considered those comments.

Request To Clarify the Extent of Engine Disassembly Required

One commenter requests clarification in the AD of the extent of engine disassembly that would trigger the part replacements and clarification of the rework specified in the terminating action. The commenter states that more extensive disassembly is required to do the part replacement specified in Part B of PWC SB No. 200–72–28069, Revision 5, dated February 10, 2003, than to do the part rework specified in Part A of that SB. The commenter also states that the triggering event of a shop visit for any reason is too restrictive.

The FAA agrees. We have rewritten the terminating action to be done at the next engine shop visit when access is available to subassembies, such as modules, accessories, and components, or at the next engine overhaul,

whichever occurs first, but before accumulating 1,800 flight hours from the effective date of this AD or before December 31, 2009, whichever occurs first.

Request To Clarify the Preamble

One commenter requests clarification of what prompted the AD. The commenter suggests that the words describing the actions prompting this AD be changed to state that the AD is being issued to prevent turbine blade axial shift, leading to high levels of vibration and possible in-flight engine shutdown.

The FAA agrees to the suggested changes to the preamble, which have been incorporated into this document. There have been six emergency landings due to high vibration levels and in-flight engine fire warnings, one incident of the loss of the airframe exhaust duct, one in-flight shutdown, one pilot report of high oil consumption, and one pilot report of loss of torque. To date, there have been no failures that have resulted in uncontained engine failures. The aircraft warning and detection system should preclude uncontained engine failures from occurring. We agree that the loss of the airframe exhaust duct should have been referenced in the preamble to the current AD. Therefore, the preamble of this proposal is written to reference the loss of the airframe exhaust duct.

Correction To Include No. 4 Bearing Rear Rotor Air Seal

The reference to replacing the No. 4 bearing rear rotor air seal was inadvertently omitted from the compliance section of the AD. We have rewritten paragraph (i) of the AD to include replacing of the No. 4 bearing rear rotor air seal.

Relevant Service Information

We have reviewed and approved the technical contents of the following Pratt & Whitney Canada service documents:

- Alert Service Bulletin (ASB) No. PW200–72–A28242, Revision 1, dated October 2, 2002, that describes procedures for borescope inspecting of compressor turbine blades and power turbine blades for axial shift within the disks.
- Service Bulletin (SB) No. PW200–72–28069, Revision 5, dated February 10, 2003, that describes procedures for replacing compressor turbine blade retaining rivets, the No. 3 bearing rotor air seal, and the No. 4 bearing front rotor air seal.
- SB No. PW200–72–28239, Revision 2, dated February 10, 2003, that describes procedures for replacing power turbine blade retaining rivets.

Transport Canada, which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued AD CF–2003–06, dated February 4, 2003, in order to ensure the airworthiness of these PWC PW206A and PW206E turboshaft engines in Canada.

Bilateral Agreement Information

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. We have examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require:

- Initial and repetitive borescope inspections of compressor turbine blades and power turbine blades for blade axial shift within the turbine disks; and
- Replacement of blade retaining rivets, the No. 3 bearing rotor air seal, and the No. 4 bearing front rotor air seal as mandatory terminating action for the repetitive borescope inspections.

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

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

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

Costs of Compliance

There are about 130 PWC PW206A and PW206E turboshaft engines of the affected design in the worldwide fleet. We estimate that 15 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 0.5 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $9,077 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $136,656. The manufacturer has stated that it may provide replacement parts at no cost to operators.

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–25–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13263 (68 FR 48544, August 14, 2003) and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney Canada: Docket No. 2003–NE–25–AD. Supersedes AD 2003–16–10, Amendment 39–13263.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by April 20, 2004.

Affected ADs

(b) This AD supersedes AD 2003–16–10, Amendment 39–13263.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) PW206A and PW206E turboshaft engines. These PWC engines are installed on, but not limited to, MD Helicopters Inc. Model MD–900 helicopters.

Unsafe Condition

(d) This AD is prompted by the need to clarify the extent of engine disassembly that triggers the required part replacements. This AD is also prompted by reports of engine shutdowns and emergency landings due to severe vibration, resulting in exhaust gases escaping from the engine-to-exhaust nozzle interface, thereby triggering in-flight engine fire warnings. The actions specified in this AD are intended to prevent turbine blade axial shift, leading to high levels of vibration, in-flight engine shutdowns and loss of the airframe exhaust duct.

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.

Initial Sequence of Borescope Inspections

(f) Perform an initial sequence of borescope inspections of compressor turbine blades and power turbine blades for blade axial shift within the turbine disks. Use paragraph 3. of Accomplishment Instructions of PWC Alert Service Bulletin (ASB) No. PW200–72–A28242, Revision 1, dated October 2, 2002, for the borescope inspection and determination of blade shift. Do the inspections at the following times:

(1) Within 25 flight hours accumulated, or 30 days after the effective date of this AD, whichever occurs earlier.

(2) After 30 flight hours, but before 50 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

(3) After 80 flight hours, but before 100 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

(4) After 180 flight hours, but before 200 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

Repetitive Borescope Inspections

(g) Thereafter, perform repetitive borescope inspections at intervals of not less than 280 nor more than 300 flight hours since-last-inspection. Use paragraph 3. of Accomplishment Instructions of PWC ASB No. PW200–72–A28242, Revision 1, dated October 2, 2002, for the borescope inspections and determination of blade shift.

Disposition

(h) If you find any blade shift, remove engine from service before further flight and perform rivet and rotor air seal replacements, as specified in paragraphs (i)(1) through (i)(3) of this AD, to return the engine to service.

Terminating Action

(i) At the next engine shop visit when access is available to subassembies, such as modules, accessories, and components, or at the next engine overhaul, whichever occurs first, but before accumulating 1,800 flight hours from the effective date of this AD or before December 31, 2009, whichever occurs first, do the following:

(1) Replace the compressor turbine blade retaining rivets with new P/N retaining rivets, and the No. 4 bearing rear rotor air seal with the new P/N No. 4 bearing rear rotor air seal. Use paragraph 3., Part A, of Accomplishment Instructions of SB No. PW200–72–28069, Revision 5, dated February 10, 2003.

(2) Replace the No. 3 bearing rotating air seal with the new P/N air seal, and the No. 4 bearing front rotor air seal with the new P/N No. 4 bearing front rotor air seal. Use paragraph 3., Part B, of Accomplishment Instructions of SB No. PW200–72–28069, Revision 5, dated February 10, 2003.

(3) Replace the power turbine blade retaining rivets with new P/N power turbine blade retaining rivets. Use paragraph 3. of Accomplishment Instructions of SB No. PW200–72–28239, Revision 2, dated February 10, 2003.

(j) Completing the actions in paragraphs (i)(1) through (i)(3) of this AD terminate all inspection requirements of this AD.

Previous Credit

(k) Previous credit is allowed:

(1) For performing the initial sequence for borescope inspections in paragraph (f) of this AD, that were done using AD 2003–16–10.

(2) For terminating action in paragraphs (i)(1) through (i)(3) of this AD that was done using Accomplishment Instructions of SB No. PW200–72–28069, Revision 4, dated December 27, 2000, and Accomplishment Instructions of SB No. PW200–72–28239, dated September 5, 2002, or Revision 1, dated December 5, 2002, before the effective date of this AD.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(m) You must use the following Pratt & Whitney Canada Service Bulletins and Alert Service Bulletin to perform the inspections and replacement actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD as of August 29, 2003 (68 FR 48544, August 14, 2003), in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. You may review copies at Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin	Page number(s)	Revision	Date
PW200–72–A28242 Total Pages—7.	All	1	October 2, 2002.
PW200–72–28069 Total Pages—17.	All	5	February 10, 2003.
PW200–72–28239 Total Pages—20.	All	2	February 10, 2003.

Related Information

(n) Transport Canada issued airworthiness directive CF–2003–06, dated February 4, 2003, which pertains to the subject of this AD, in order to assure the airworthiness of these PWC PW206A and PW206E turboshaft engines in Canada.

Issued in Burlington, Massachusetts, on February 13, 2004.

Peter A. White,

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

[FR Doc. 04–3682 Filed 2–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; limited reopening of comment period.

SUMMARY: This document announces a limited reopening of the comment period on the notice of proposed rulemaking, published in the **Federal Register** on August 14, 2003, to obtain public comment on three new documents related to this rulemaking. We will consider these comments as we develop the final rule.

DATES: Comments must be received by April 5, 2004.

ADDRESSES: You may submit comments, identified by RIN 1219–AB29, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.*
- E-mail: *comments@msha.gov.* Include "RIN 1219–AB29" in the subject line of the message.
- Fax: (202) 693–9441.
- Mail, Hand Delivery, or Courier: MSHA, 1100 Wilson Blvd, Room 2350, Arlington, Virginia 22209.

Instructions: All comments, including any personal information contained therein, will be posted without change to *http://www.msha.gov/currentcomments.htm.*

Docket: The entire rulemaking record may be viewed in MSHA's public reading room at 1100 Wilson Boulevard, Room 2349, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939, *Nichols.Marvin@dol.gov,* (202) 693–9440 (telephone), or (202) 693–9441 (facsimile).

SUPPLEMENATARY INFORMATION:

Background

On January 19, 2001, we published a rule at 66 FR 5706 that established new health standards for underground metal and nonmetal miners by requiring use of approved equipment and low sulfur fuel, and by setting an interim and final concentration limit for diesel particulate matter (DPM) in the underground mining environment. Under a settlement agreement reached in response to legal challenges to the 2001 rule, we amended portions of the rule on February 27, 2002 (67 FR 9180), and initiated this rulemaking. We published the advance notice of proposed rulemaking (ANPRM) on September 25, 2002 (67 FR 60199), and published the proposed rule on August 14, 2003 (68 FR 48668). The proposed rule would revise the interim concentration limit; designate elemental carbon as the surrogate for measuring DPM for the interim limit; allow an extension of time in which to achieve compliance with the interim limit; apply our longstanding hierarchy of controls used for other exposure-based health standards for metal and nonmetal mines, including engineering and administrative controls supplemented by respiratory protection, but prohibit rotation of miners; and revise the requirements for the DPM control plan. Four public hearings were held on the proposed rule between September 16, 2003 and October 7, 2003. The comment period closed on October 14, 2003. The legal challenge is stayed pending completion of additional rulemaking actions.

Limited Reopening of Comment Period

We recently received new information related to this rulemaking, and concluded that it is in the public interest to obtain comments on this information. Therefore, the comment period is reopened for the limited purpose of obtaining public comment on:

- U.S. Department of Health and Human Services, Center for Disease Control, National Institute of Occupational Safety and Health, "The Effectiveness of Selected Technologies in Controlling Diesel Emissions in an Underground Mine—Isolated Zone Study at Stillwater Mining Company's Nye Mine," January 5, 2004.

In addition, two other documents have come to the Agency's attention and MSHA is also seeking comments on:

- U.S. Department of Labor, Bureau of Labor Statistics, and U.S. Department of Health and Human Services, Center for Disease Control, National Institute of Occupational Safety and Health, "Respirator Usage in Private Sector Firms, 2001," September, 2003.
- Chase, Gerald, "Characterizations of Lung Cancer in Cohort Studies and a NIOSH Study on Health Effects of Diesel Exhaust in Miners," undated, received January 5, 2004.

These documents can be accessed at *http://www.msha.gov.* We invite public comment on the findings of these documents and their impact on this rulemaking. We will disregard any comments that are outside the scope of these documents.

Dated: February 13, 2004.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 04–3656 Filed 2–19–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1200

RIN 3095–AB19

Official Seals and Logos

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to modify its regulations on the use of official NARA seals by the public and other Federal agencies by extending the regulations to apply to the use of official NARA logos. This part applies to the public and other Federal agencies.

DATES: Comments are due by April 20, 2004.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to: Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Fax: Submit comments by facsimile transmission to: 301–837–0319.
- E-mail: Send comments to *http://www.regulations.gov.* You may also comment via e-mail to *comments@nara.gov. See* the **SUPPLEMENTARY INFORMATION** for details.

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

SUPPLEMENTARY INFORMATION: NARA has three official seals, which are primarily used to authenticate records in NARA's custody. NARA also has a number of official logos, which we use to represent our major programs, products, and services. For example, we have an ongoing exhibit entitled "American Originals" which features original historical documents, and we have an official "American Originals" logo that represents this exhibit. In addition to the official logos that represent our major programs, products, and services, each of our Presidential libraries has an official logo.

Though the official NARA seals and logos are primarily reserved for NARA use, if certain conditions are met, the public and other Federal agencies may request to use the seals and logos with NARA's permission.

We are proposing to extend the regulations to apply to the official NARA logos because our existing regulations only cover the three official NARA seals.

Information Collection Subject to the Paperwork Reduction Act

This proposed rule modifies the existing information collection in § 1200.8, the written request, by expanding coverage to include official NARA logos, not just official NARA seals. The information collection in § 1200.8 is subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number for the existing information collection is 3095–0052. NARA invites comments on the proposed changes to the information collection. Comments should be addressed to NARA and OMB (*see* **ADDRESSES**).

The change to the information collection in § 1200.8 is designed to assist NARA in determining whether to approve requests to use our official logos. It affects the public and other Federal agencies that are requesting to use our official logos and seals. For the seals, we have estimated that we receive one request each from five respondents per year. For the logos, we also estimate that we will receive one request each from five respondents per year. The respondent burden to provide the information will be 20 minutes per request, for a total burden of three hours and 20 minutes. This is an increase of one hour and 40 minutes over the burden in the previously approved information collection.

E-mail Comments

Please submit e-mail comments within the body of your e-mail message or attach comments avoiding the use of any form of encryption. Please also include "Attn: 3095–AB19" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–837–2902.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1200

Seals and insignia.

For the reasons set forth in the preamble, NARA proposes to amend part 1200 of title 36, Code of Federal Regulations, as follows:

PART 1200—OFFICIAL SEALS

1. The authority citation for part 1200 is revised to read as follows:

Authority: 18 U.S.C. 506, 701, and 1017; 44 U.S.C. 2104(e), 2116(b), 2302.

2. Amend § 1200.1 by adding the definition of "NARA Logo" and revising the definition of "Replica or reproduction" to read as follows:

§ 1200.1 Definitions.

* * * * *

NARA logo means a name, trademark, service mark, or symbol used by NARA in connection with its programs, products, or services.

* * * * *

Replica or reproduction means a copy of an official seal or NARA logo displaying the form and content.

Subpart B—How Are NARA's Official Seals and Logos Designed and Used?

3. Revise the heading of subpart B to read as set forth above.

4. Add § 1200.7 to subpart B to read as follows:

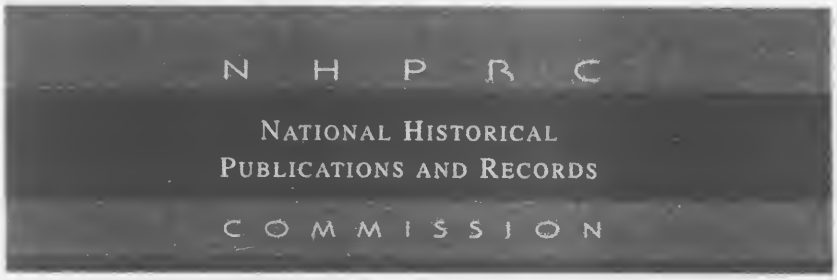
§ 1200.7 What are NARA logos and how are they used?

(a) NARA's official logos include, but are not limited to, those illustrated as follows:

(1) The Records Center Program;

BILLING CODE 7515–01–P

(2) The National Historical Publications and Records Commission;



(3) American Originals;

(4) Electronic Records Archives;

(5) The Archival Research Catalog;

(6) The Archives Library Information Center;

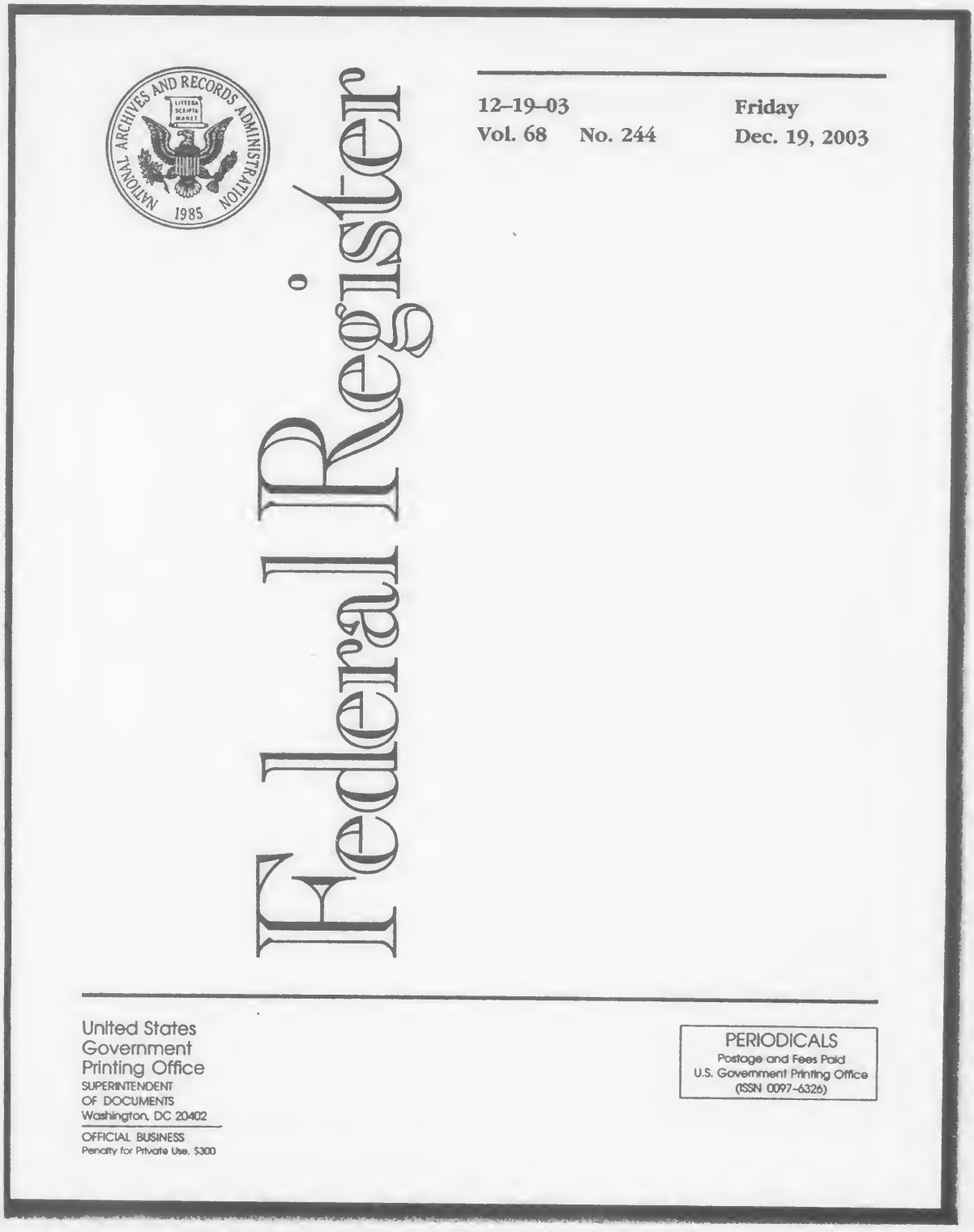
(7) Presidential Libraries; and

(8) Federal Register publications.

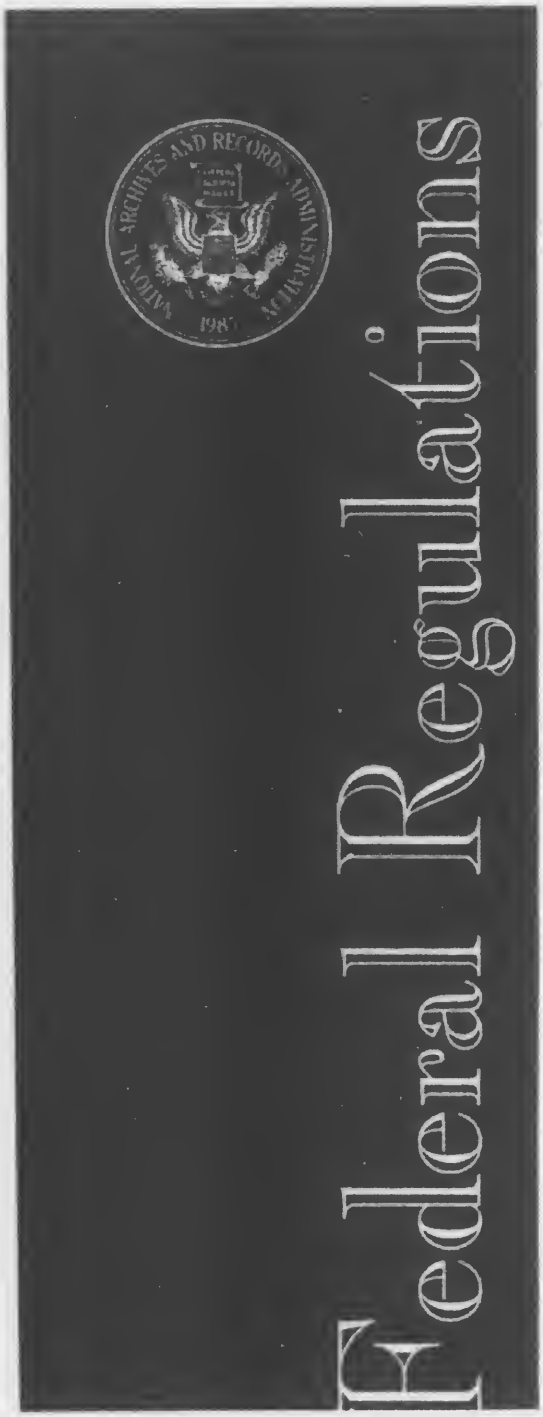
(i) Electronic Code of Federal Regulations.

(ii) Regulations.gov and FedReg.gov web sites.

(iii) Federal Register paper editions; and



(iv) Code of Federal Regulations paper edition.



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Parts 140 to 155

Revised as of October 1, 2003

Shipping

BILLING CODE 7515-01-C

(b) *Other official NARA logos.* For inquiries on other official NARA logos, contact the Office of General Counsel (NGC). Send written inquiries to the Office of General Counsel (NGC), Room 3110, 8601 Adelphi Rd., College Park, MD 20740–6001.

(c) NARA uses its logos for official business which includes but is not limited to:

(1) Exhibits;

(2) Publicity and other materials associated with a one-time or recurring NARA event or activity;

(3) NARA Web sites (Intranet and Internet);

(4) Officially approved internal and external publications; and

(5) Presentations.

(d) NARA logos may be used by the public and other Federal agencies for events or activities co-sponsored by NARA, but only with the approval of the Archivist. *See* subpart C for procedures to request approval for use.

Subpart C—Procedures for the Public To Request and Use NARA Seals and Logos

5. Revise the heading of subpart C to read as set forth above.

6. Amend § 1200.8 by revising the heading, introductory text, paragraphs (a)(2), (a)(3), and (a)(4), and paragraph (c) to read as follows:

§ 1200.8 How do I request to use the official seals and logos?

You may only use the official seals and logos if NARA approves your written request. Follow the procedures in this section to request authorization.

(a) * * *

(2) Which of the official seals and/or logos you want to use and how each is going to be displayed. Provide a sample of the document or other material on which the seal(s) and/or logo(s) would appear, marking the sample in all places where the seal(s) and/or logo(s) would be displayed;

(3) How the intended use of the official seal(s) and/or logo(s) is connected to your work with NARA on an event or activity (example: requesting to use the official NARA seal(s) and/or logo(s) on a program brochure, poster, or other publicity announcing a co-sponsored symposium or conference.); and

(4) The dates of the event or activity for which you intend to display the seal(s) and/or logo(s).

* * * * *

(c) The OMB control number 3095–0052 has been assigned to the information collection contained in this section.

7. Amend § 1200.10 by revising paragraph (b) as follows:

§ 1200.10 What are NARA's criteria for approval?

* * * * *

(b) Seals and logos will not be used on any article or in any manner that reflects unfavorably on NARA or endorses, either directly or by implication, commercial products or services, or a requestor's policies or activities.

8. Amend § 1200.12 by revising the introductory text to read as follows:

§ 1200.12 How does NARA notify me of the determination?

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal(s) and/or logo(s) along with an approval letter that will:

* * * * *

9. Amend § 1200.14 by revising the heading and paragraphs (a), (d), and (e) to read as follows:

§ 1200.14 What are NARA's conditions for the use of the official seals and logos?

* * * * *

(a) Use the official seals and/or logos only for the specific purpose for which approval was granted;

* * * * *

(d) Do not change the official seals and/or logos themselves. They must visually and physically appear as NARA originally designed them, with no alterations.

(e) Only use the official seal(s) and/or logo(s) for the time period designated in the approval letter (example: for the duration of a conference or exhibit).

Subpart D—Penalties for Misuse of NARA Seals and Logos

10. Revise the heading of Subpart D to read as set forth above.

11. Revise § 1200.16 to read as follows:

§ 1200.16 Will I be penalized for misusing the official seals and logos?

(a) *Seals.* (1) If you falsely make, forge, counterfeit, mutilate, or alter official seals, replicas, reproductions or embossing seals, or knowingly use or possess with fraudulent intent any altered seal, you are subject to penalties under 18 U.S.C. 506.

(2) If you use the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 1017 and to other provisions of law as applicable.

(b) *Logos.* If you use the official logos, replicas or reproductions, of logos in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 701.

Dated: February 12, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–3573 Filed 2–19–04; 8:45 am]

BILLING CODE 7515–01–P

POSTAL SERVICE

39 CFR Part 111

Machinable Parcel Testing Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* (DMM) that would centralize the processing of requests for parcel testing. Such testing is requested to determine if the parcels can be successfully processed on bulk mail center (BMC) parcel sorters when they do not conform to the general machinability criteria in the DMM. Under this proposal parcel testing would no longer be performed by the BMC manager. It would be performed by the Manager, BMC Operations, USPS Headquarters.

DATES: Submit comments on or before March 22, 2004.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 1735 N Lynn Street, Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11 Floor N, Washington, DC. Comments may be submitted via fax to 703–292–4058, ATTN: Obataiye B. Akinwole or via e-mail to *obataiye.b.akinwole@usps.gov.*

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, 703–292–3643.

SUPPLEMENTARY INFORMATION:

Background

Under current Postal Service standards, a mailer may submit a request for testing of parcels to a destinating BMC plant manager. The BMC plant manager may authorize the mailer to enter such parcels as machinable parcels rather than as irregular parcels if the parcels are tested on BMC parcel sorters and determined by the manager to be machinable. The parcels must be properly labeled,

entered at a post office within the service area of the authorizing BMC, and bear delivery addresses located within the service area of the authorizing BMC.

The Postal Service maintains that system-wide consistency would be achieved if exception requests are processed at one central location rather than at each BMC. This change is in line with the Postal Service's obligation to ensure prompt, efficient, reliable responses to customer needs.

Proposed Changes

This proposal would revise the DMM standards for testing parcels that do not conform to the general machinability criteria for machinable parcels. Under this proposal, mailers would send requests for testing to the manager, BMC Operations, USPS Headquarters for a determination of machinability. The procedure for testing parcels would ensure that customer expectations of consistency across postal operations are met. The procedure also would remove the processing of requests for testing from BMCs and enable BMC Operations at USPS Headquarters to ensure that test results are consistent.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the DMM, incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Part 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below.

C Characteristics and Content

C000 General Information

C010 General Mailability Standards

* * * * *

[Delete 7.0, Mailing Test Packages.]

* * * * *

C050 Mail Processing Categories

* * * * *

4.0 MACHINABLE PARCEL

* * * * *

4.3 Exception

[Revise 4.3 to read as follows:]

Some parcels may be successfully processed on BMC parcel sorters even though they do not conform to the general machinability criteria in 4.1. The manager, BMC Operations, USPS Headquarters (see G043 for address) may authorize a mailer to enter such parcels as machinable parcels rather than irregular parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. Mailers who wish to have parcels tested for machinability on USPS parcel sorting machines must:

a. Submit a written request to BMC Operations. The request must list mailpiece characteristics for every shape, weight, and size to be considered. If the letter requesting testing describes a mailpiece that falls within the specifications of pieces that were tested previously, they will not be tested.

b. Describe mailpiece construction, parcel weight(s), estimated number of parcels to be mailed in the coming year, and preparation level (*e.g.*, destination BMC pallets).

c. Send 100 samples to the test facility designated by the manager, BMC Operations at least 6 weeks prior to the first mailing date. The manager, BMC Operations will recommend changes, to ensure machinability, for parcels that do not qualify.

* * * * *

6.0 OUTSIDE PARCEL (NONMACHINABLE)

[Revise the first sentence to read as follows:]

An outside parcel is a parcel that exceeds any of the maximum dimensions for a machinable parcel.

* * *

* * * * *

G General Information

G000 The USPS and Mailing Standards

* * * * *

G040 Information Resources

* * * * *

G043 Address List for Correspondence

[Add the following address:]

BMC OPERATIONS, US POSTAL SERVICE,E 475 L'ENFANT PLZ SW RM 7631, WASHINGTON DC 20260–2806.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect the changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–3657 Filed 2–19–04; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7625–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Bekaert Corporation (Bekaert) to exclude (or delist) a certain solid waste generated by its Dyersburg, Tennessee, facility from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

The EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that Bekaert's petitioned waste is nonhazardous with respect to the original listing criteria and that the generation of an F006 hazardous waste sludge from the treatment of waste waters from electroplating processes performed by the facility will not be hazardous at the point of generation because of the adequately reduced likelihood of migration of constituents from this waste. The EPA would also conclude that Bekaert's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: The EPA will accept comments until April 5, 2004. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by March 8, 2004. The request

must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia, 30303. You should send a third copy to Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee, 37243–1535. Identify your comments at the top with this regulatory docket number: R4DLP–0401–Bekaert. You may submit your comments electronically to Daryl Himes at *Himes.Daryl@epa.gov.*

You should address requests for a hearing to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this final rule, contact Daryl Himes, South Enforcement and Compliance Section (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 or call (404) 562–8614.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is the EPA Proposing?

The EPA is proposing to grant the delisting petition submitted by Bekaert to have its dewatered waste water treatment plant (WWTP) sludge (F006 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

B. Why Is the EPA Proposing To Approve This Delisting?

Bekaert's petition requests a delisting for the dewatered wastewater treatment plant (wwtp) sludge which result from the treatment of waste waters generated as a result of its electroplating operations. Bekaert does not believe that the petitioned waste meets the criteria for which the EPA listed it. Bekaert also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from the Bekaert facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Dyersburg, Tennessee facility.

C. How Will Bekaert Manage the Waste if It Is Delisted?

Bekaert currently sends the petitioned waste to a hazardous waste landfill. If the delisting exclusion is finalized, Bekaert intends to dispose of the petitioned waste (*i.e.*, dewatered WWTP sludge) in a subtitle D solid waste landfill in the State of Tennessee.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months after the EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States who have received authorization from the EPA to make their own delisting decisions.

The EPA allows the States to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by the EPA Administrator under 40 CFR 260.22 are effective in the State of Tennessee only after the final rule has been published in the **Federal Register**.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32. The EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (*See* part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has "delisted" the waste.

C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. *See* 66 FR 27266 (May 16, 2001).

III. The EPA's Evaluation of the Waste Information and Data

A. What Waste Did Bekaert Petition the EPA To Delist?

On October 28, 2002, Bekaert petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a dewatered WWTP sludge generated from the facility located in Dyersburg, Tennessee. The waste (EPA Hazardous Waste No. F006) is generated by treating wastewater from the copper and zinc electroplating of steel cords for the automobile tire industry. Specifically, in its petition, Bekaert requested that the EPA grant an exclusion for 1250 cubic yards per calendar year of dewatered WWTP sludge resulting from the treatment of waste waters from an electroplating operation at its facility.

B. Who Is Bekaert and What Process Do They Use To Generate the Petition Waste?

Bekaert is a facility located in an industrial setting in the northeast portion of the City of Dyersburg, Tennessee.

Bekaert produces cabled wire which is a major component in the production of steel belted radial tires. The incoming "raw material" from which the wire is drawn is two (2) ton spools of high carbon steel wire rod. As part of the production process, the drawn wire is plated with copper and zinc. Treatment of the waste waters which result from the electroplating process result in the generation of sludges which are classified as F006 listed hazardous wastes pursuant to 40 CFR 261.31. The 40 CFR part 261, appendix VII hazardous constituents for which F006 hazardous wastes are listed include cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. How Did Bekaert Sample and Analyze the Data in This Petition?

To support its petition, Bekaert submitted:

(1) Results of the total constituent analysis for metals;

(2) Results of the Toxicity Characteristic Leaching Procedure (TCLP) extract for the following: volatile and semivolatile organics, pesticides, herbicides, and metals.

D. What Were the Results of Bekaert's Analyses?

The EPA believes that the descriptions of Bekaert's dewatered WWTP sludge, in addition to the data submitted in support of the petition show that the dewatered WWTP sludge is nonhazardous. Analytical data from Bekaert's dewatered WWTP sludge samples were used for evaluation in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by Bekaert and has determined they satisfy the EPA's

criteria for collecting representative samples of the variations in constituent concentrations in the hazardous waste water treatment sludge. The data submitted in support of the petition show that constituents in Bekaert's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Bekaert has successfully demonstrated that the dewatered WWTP sludge is nonhazardous.

TABLE 1.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS OF THE STABILIZED HAZARDOUS DEWATERED WWTP SLUDGE AND CORRESPONDING DELISTING LIMITS [1]

Constituent	Total constituent analyses (mg/kg)	TCLP leachate conc. (mg/l)	Maximum allowable TCLP conc. (mg/l)
Antimony	<7.4	ND	0.922
Arsenic	<7.9	ND	0.0419
Barium	300	ND	100
Cadmium	<8.4	ND	0.672
Chromium	85.3	ND	5.0
Copper	1200	ND	4710
Lead	19.6	ND	5.0
Mercury	<0.04938	ND	0.2
Nickel	109	ND	127
Selenium	<4.94	ND	1.0
Silver	<7.9	ND	5.0
Zinc	27,700	74	1260
2,4-D		ND	5.96
2,4,5-TP (Silvex)		ND	1.0
Benzene		ND	0.806
		ND	0.560
Chlorobenzene		ND	8.51
Chloroform		ND	1.09
1,4-Dichlorobenzene		ND	2.46
1,2-Dichloroethane		ND	0.5
1,1-Dichloroethene		ND	0.0982
Methyl ethyl ketone		8.71	200
Tetrachloroethene		ND	0.425
Trichloroethene		ND	0.5
Vinyl Chloride		ND	0.0415
Cresols		ND	200
m-Cresol		ND	200
m-,p-Cresols		ND	200
Pentachlorophenol		ND	100
2,4,5-Trichlorophenol		ND	400
2,4,6-Trichlorophenol		ND	2.0
2,4-Dinitrotoluene		ND	0.0915
Hexachlorobenzene		ND	0.00295
Hexachlorobutadiene		ND	0.5
Hexachloroethane		ND	1.38
Nitrobenzene		ND	2.0
Pyridine		ND	3.19
g-BHC (Lindane)		ND	0.003
Chlordane		ND	0.0156
Endrin		ND	0.02
Heptachlor		ND	0.08
Heptachlor epoxide		ND	0.08
Methoxychlor		ND	10
Toxaphene		ND	0.05

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
ND—Denotes that the constitutent was not detected.

E. How Did the EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated Bekaert's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. The DRAS uses EPA's Composite Model for leachate migration with Transformation Products (EPACMTP) to predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor. From a release to ground water, we considered routes of exposure to a human receptor of ingestion of contaminated ground water, inhalation from groundwater via showering and dermal contact while bathing. The DRAS program considers the surface water pathway by erosion of waste from run-off from an open landfill. It evaluates the subsequent routes of exposure to a human receptor from such releases through exposure pathways of

fish ingestion and ingestion of drinking water. DRAS also considers releases of waste particles and volatile emissions to air from the surface of an open landfill. From a release to air, we considered routes of exposures of inhalation of particulates and absorption into the lungs, ingestion of particulates eliminated from respiratory passages and subsequently swallowed, air deposition of particulates and subsequent ingestion of the soil/waste mixture, and inhalation of volatile constituents.

We used the maximum estimated waste volume and the maximum reported total and leachate concentration as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air.

Assuming a cancer risk of 1×10^{-5} and a hazard quotient of one, the DRAS program back calculated a maximum allowable concentration level which would not exceed protective levels in both the waste and the leachate for each constituent at the given annual waste volume of 1,250 cubic yards.

F. What Did the EPA Conclude About Bekaert's Analysis?

The EPA concluded, after reviewing Bekaert's processes that no other hazardous constituents of concern, other than those for which the testing was completed, are likely to be present or formed as reaction products or by-products in Bekaert's wastes. In addition, on the basis of explanations and analytical data provided by Bekaert, pursuant to § 260.22, the EPA concludes that the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22 and 261.23, respectively.

G. What Other Factors Did the EPA Consider in Its Evaluation?

During the evaluation of this petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. Therefore, no appreciable air releases are likely from the dewatered WWTP sludge under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water treatment sludge in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the hazardous waste water treatment sludge.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (*See* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this proposal due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if the dewatered WWTP sludge were released from a municipal solid waste landfill through runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (US EPA, OWRS, 1987). The EPA, therefore, concluded that this hazardous waste water treatment sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is the EPA's Evaluation of This Delisting Petition?

The descriptions by Bekaert of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this proposal), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see table 1). The EPA believes that the dewatered WWTP sludge generated by Bekaert contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, the EPA believes that it should grant to Bekaert an exclusion for the dewatered WWTP sludge. The EPA believes the data submitted in support of the petition shows the Bekaert dewatered WWTP sludge to be nonhazardous.

The EPA has reviewed the sampling procedures used by Bekaert and has determined they satisfy the EPA's criteria for collecting representative samples of variable constituent concentrations in the dewatered WWTP sludge. The data submitted in support of the petition show that constituents in Bekaert's waste are presently below the compliance point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment. The EPA believes that Bekaert has successfully demonstrated that the dewatered WWTP sludge is nonhazardous.

The EPA therefore proposes to grant an exclusion to Bekaert, in Dyersburg, Tennessee, for the dewatered WWTP sludge described in its petition. The EPA's decision to exclude this waste is based on analysis performed on samples taken of the dewatered WWTP sludge.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the dewatered WWTP sludge under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Bekaert, must comply with the requirements in 40 CFR part 261, appendix IX, table 1 as amended by this proposal. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which Bekaert must test the leachate from the dewatered WWTP sludge; the leachate must conform to the standards described below to be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR part 261, appendix IX, table 1, based on information in the petition. The EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by Bekaert, previous test data provided for the waste, and the respective health-based

levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract and total concentrations of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Bekaert manages and disposes of any dewatered WWTP sludge that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the dewatered WWTP sludge until characterization is complete will protect against improper handling of hazardous material.

(3) Verification Testing Requirements

Bekaert must complete a verification testing program on the dewatered WWTP sludge to assure that the dewatered WWTP sludge does not exceed the maximum levels specified in paragraph (1). If the EPA determines that the data collected under this paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on a quarterly basis followed by an annual basis. The first part of the verification testing program consists of testing the dewatered WWTP sludge for specified indicator parameters as per paragraph (1) on a quarterly basis. The quarter testing will be performed for four (4) quarters by taking a composite sample consisting of four (4) grab samples from an individual roll-off container once this rule is final. The first sample can be taken at any time following this rule being final. The remaining quarterly samples shall be taken at ninety (90) day intervals from the taking of the first quarterly sample. If any roll-off fails to meet the specified limits, then Bekaert must dispose of the waste as hazardous.

The second part of the verification testing program is the annual testing of one composite samples of dewatered WWTP sludge for all constituents specified in paragraph (1). The first and subsequent annual tests should coincide with the month during which the final quarterly test was performed. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), Bekaert must notify the EPA according to the requirements in paragraph (6). The EPA will then take the appropriate actions necessary to protect human health and the environment per paragraph (6).

The exclusion is effective upon publication in the **Federal Register** but the disposal cannot begin until the first quarterly verification sampling is completed and is approved by EPA. Disposal is also not authorized if Bekaert fails to perform the quarterly and yearly testing as specified herein. Should Bekaert fail to conduct the quarterly/yearly testing as specified herein, then disposal of dewatered WWTP sludge as delisted waste may not occur in the following quarter(s)/year(s) until Bekaert obtains the written approval of the EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow Bekaert the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Bekaert must prove the effectiveness of the modified process and request approval from the EPA. Bekaert must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and paragraph (3), is satisfied.

(5) Data Submittals

To provide appropriate documentation that Bekaert's facility is managing the dewatered WWTP sludge, Bekaert must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3) including quality control information for five years. Paragraph (5) requires that Bekaert furnish these data upon request for inspection by any employee or representative of the EPA or the State of Tennessee.

If the proposed exclusion is made final, then it will apply only to 1250 cubic yards per calendar year of dewatered WWTP sludge generated at the Bekaert facility after successful verification testing.

The EPA would require Bekaert to file a new delisting petition under any of the following circumstances:

(a) If Bekaert significantly alters the manufacturing process treatment system except as described in paragraph (4).

(b) If Bekaert uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(c) If Bekaert makes any changes that could affect the composition or type of waste generated.

Bekaert must manage waste volumes greater than 1250 cubic yards per calendar year of dewatered WWTP sludge as hazardous waste until the EPA grants a new exclusion. When this exclusion becomes final, the management by Bekaert of the dewatered WWTP sludge covered by this petition would be relieved from Subtitle C jurisdiction. Bekaert must either (a) treat, store, or dispose of the waste in a State permitted on-site facility, or (b) Bekaert must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste consistent with the requirements of RCRA.

(6) Reopener

The purpose of paragraph (6) is to require Bekaert to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Bekaert must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires Bekaert to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within ten (10) days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. The EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify

emergency rulemaking. *See* APA section 553(b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that Bekaert provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Bekaert must provide this notification within sixty (60) days of commencing this activity.

B. What Happens if Bekaert Violates the Terms and Conditions?

If Bekaert violates the terms and conditions established in the exclusion, the EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects Bekaert to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, U. S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303. Send a third copy to Mr. Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. You should identify your comments at the top with this regulatory docket number: R$DLP–0301–Bekaert.

You should submit requests for a hearing to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U. S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (404) 562–8614 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050 0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically

significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

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

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on 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, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 10, 2004.

Winston A. Smith,

Director, Waste Management Division, Region 4.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In appendix IX to part 261, in table 1, revise the following waste stream, and in tables 2 and 3, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

Facility	Address	Waste description
*	*	* * * * * * *
Bekaert Corp.	Dyersburg, TN	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum rate of 1250 cubic yards per calendar year after [publication date of the final rule] and disposed in a Subtitle D landfill. For the exclusion to be valid, Bekaert must implement a verification testing program that meets the following paragraphs:

Facility	Address	Waste description
		(1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Bekaert must use the leaching method specified at 40 CFR 261.24 to measure constituents in the waste leachate. (A) *Inorganic Constituents (from Table 1) TCLP (mg/l):* Cadmium—0.672; Chromium—5.0; Nickel—127; Zinc—1260.0. (B) Organic Constituents (from Table 1) TCLP (mg/l): Methyl ethyl ketone—200.0. (2) *Waste Holding and Handling:* (A) Bekaert must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of 40 CFR 262.34 and continue to dispose of the dewatered WWTP sludge as hazardous waste. (B) Once the first quarterly sampling and analyses event described in paragraph (3) is completed and valid analyses demonstrate that no constituent is present in the sample at a level which exceeds the delisting levels set in paragraph (1), Bekaert can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (C) If constituent levels in any sample taken by Bekaert exceed any of the delisting levels set in paragraph (1), Bekaert must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA. (D) *Quarterly Verification Testing Requirements:* Upon this exclusion becoming final, Bekaert may begin the quarterly testing requirements of paragraph (3) on its dewatered WWTP sludge. (3) *Quarterly Testing Requirements:* Upon this exclusion becoming final, Bekaert may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (A)(i) Collect four representative composite samples of the hazardous waste dewatered WWTP sludge at quarterly (ninety (90) day) intervals after EPA grants the final exclusion. The first composite sample may be taken at any time after EPA grants the final approval. (ii) Analyze the samples for all constituents listed in paragraph (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in paragraph (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Bekaert will report its first quarterly analytical test data to EPA. If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in paragraph (1) of this exclusion, Bekaert can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations. (4) *Annual Testing:* (A) If Bekaert completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent with a level which exceeds the limits set forth in paragraph (1), Bekaert may begin annual testing as follows: Bekaert must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in paragraph (1) at least once per calendar year. (B) The sample for the annual testing shall be a representative composite sample (according to SW–846 methodologies) for all constituents listed in paragraph (1). (C) The sample for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (5) *Changes in Operating Conditions:* If Bekaert significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from the EPA. (6) *Data Submittals:* Bekaert must submit the information described below. If Bekaert fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bekaert must: (A) Submit the data obtained through paragraph (3) to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia, 30303, within the time specified. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either the EPA or the State of Tennessee request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

Facility	Address	Waste description
		(7) *Reopener:* (A) If, anytime after disposal of the delisted waste Bekaert possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within ten (10) days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), Bekaert must report the data, in writing, to the Regional Administrator or his delegate within ten (10) days of first possessing or being made aware of that data. (C) If Bekaert fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information requires action the EPA, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have ten (10) days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (8) *Notification Requirements:* Bekaert must do the following before transporting the delisted waste: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, sixty (60) days before beginning such activities. (B) Update the one-time written notification if Bekaert ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

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[FR Doc. 04–3600 Filed 2–19–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7624–9]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Wheeler Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is issuing a notice of intent to delete the Wheeler Pit Superfund Site (Site) located in Janesville, Wisconsin, from the National Priorities List (NPL) and requests public comments on this notice of intent to delete. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Wisconsin, through the Wisconsin Department of Natural Resources, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Wheeler Pit Superfund Site without prior notice of intent to delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive timely adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on adverse comments received on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register.**

DATES: Comments concerning this Site must be received by March 22, 2004.

ADDRESSES: Written comments should be addressed to: Zenny Sadlon, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson, Chicago, IL 60604, 312–886–6682 or 1–800–621–8431.

FOR FURTHER INFORMATION CONTACT: Darryl Owens, Remedial Project Manager at (312) 886–7089, or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Hedberg Public Library, 316 S. Main Street, Janesville, Wisconsin 53545, Monday through Friday 9 a.m. to 9 p.m., Saturday 9 a.m. to 5 p.m. and Sunday 1 p.m to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: February 4, 2004.

Thomas V. Skinner,

Regional Administrator, Region V.

[FR Doc. 04–3598 Filed 2–19–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01; I.D. 122303G]

RIN 0648–AP95

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Rebuilding Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Secretarial Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Secretarial Amendment 1), which was prepared by the Secretary of Commerce and the Gulf of Mexico Fishery Management Council (Council) pursuant to the rebuilding requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would establish a quota for red grouper, provide for closure of the entire shallow-water grouper fishery when either the shallow-water grouper quota or the red grouper quota is reached, establish a bag limit of two red grouper per person per day, reduce the shallow-water grouper quota, reduce the deep-water grouper quota, and establish a quota for tilefishes. In addition, for red grouper in the Gulf of Mexico, Secretarial Amendment 1 would establish a 10–year stock rebuilding plan, biological reference points, and stock status determination criteria consistent with the requirements of the Magnuson-Stevens Act. The intended effect of this proposed rule is to end overfishing and rebuild the red grouper resource.

DATES: Comments must be received no later than 5 p.m., eastern time, on April 20, 2004.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments on this rule may be submitted by e-mail. The mailbox address for providing e-mail comments is *0648–AP95.Proposed@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AP95.

Copies of documents supporting this proposed rule, which include an environmental assessment, a fishery impact statement, a social impact statement, a regulatory impact review (RIR), and an initial regulatory flexibility act analysis (IRFA) are available from the NMFS address above.

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

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

Background

In October 2000, NMFS declared the Gulf of Mexico stock of red grouper to be overfished and undergoing overfishing. This determination was based on the results of a 1999 red grouper stock assessment and subsequent analysis by the NMFS Southeast Fisheries Science Center and the Council's Reef Fish Stock Assessment Panel. Subsequently, a 2002 stock assessment found that the stock, although still undergoing overfishing, is in an improved condition and is no longer overfished. However, the stock has not yet reached the biomass level that is capable of producing MSY on a continuing basis (B_{MSY}). Therefore, measures to end overfishing and a rebuilding plan to restore the stock to the B_{MSY} level in 10 years or less are still necessary.

Secretarial Amendment 1 and this proposed rule contain measures for red grouper that are designed to end overfishing, establish biological reference points and stock status determination criteria, and initiate implementation of the rebuilding plan in a manner that allocates the necessary restrictions fairly and equitably between the recreational and commercial sectors of the fishery, consistent with the requirements of the Magnuson-Stevens Act. Because the reef fish fishery is a multi-species fishery in which fishers can easily redirect fishing effort to other reef fish species, additional measures, applicable to other closely associated shallow-water and deep-water groupers and tilefishes, are provided to minimize any potential negative impacts on those stocks as a result of a possible shift of fishing effort from red grouper to those species.

Biological Reference Points and Stock Status Determination Criteria

Consistent with the requirements of the Magnuson-Stevens Act, Secretarial Amendment 1 would establish the following biological reference points and stock status determination criteria for Gulf of Mexico red grouper maximum sustainable yield (MSY); optimum yield (OY); maximum fishing mortality threshold (MFMT) (the fishing mortality rate which, if exceeded, constitutes overfishing); and minimum stock size threshold (MSST) (the stock size below which the stock would be considered overfished).

MSY = 7.560 million lb (3.429 million kg).

OY = The yield obtained from a fishing mortality rate equal to 75 percent of F_{MSY}. OY is currently estimated to be 7.385 million lb (3.350 million kg) gutted weight, based on an F_{MSY} of 0.306.

MFMT = F_{MSY} (currently estimated at 0.306), or the fishing mortality consistent with recovery to MSY in no more than 10 years.

MSST = 80 percent of B_{MSY}; currently estimated to be 672 metric tons of mature female gonad weight, based upon a B_{MSY} of 840 metric tons of mature female gonad weight.

Stock Rebuilding Plan

Secretarial Amendment 1 would establish a 10–year red grouper rebuilding plan, structured in 3–year intervals, that would end overfishing and rebuild the stock to MSY. Measures to implement the plan are designed to allocate the required reductions equitably between the commercial and recreational sectors. The 3–year intervals are intended to provide short-term stability for the management and operation of the fishery, correlate more closely with the timing of future stock assessments, and provide a more reasonable time period for assessing the impacts of prior management actions. The appropriate parameters for subsequent 3–year intervals, consistent with the overall objectives of the rebuilding plan, would be determined based upon the most recent stock assessments.

Initial (2004–2006) Implementation of the Rebuilding Plan

Based on the results of the latest (2002) red grouper stock assessment, a reduction of approximately 9.4 percent in overall red grouper harvest is necessary to end overfishing and initiate stock rebuilding during the first 3–year interval of the 10–year rebuilding plan. The following measures are designed to achieve that reduction fairly and equitably within both the commercial and recreational sectors.

Measures Applicable to the Commercial Red Grouper Fishery

This proposed rule would establish a commercial red grouper quota of 5.31 million lb (2.41 million kg) gutted weight. This would achieve a 9.4–percent reduction from the average commercial harvest during the baseline period, 1999–2001.

In addition, the provisions for closure of the shallow-water grouper fishery would be modified. Red grouper are included in the existing shallow-water grouper quota but under this proposed rule would also be subject to a separate red grouper quota. If the red grouper quota was reached and that fishery closed, it is likely that incidental catch and mortality of red grouper would continue until the shallow-water grouper quota was reached and that fishery was closed. To avoid that potential adverse impact, this proposed rule would require closure of the entire shallow-water grouper fishery when either the red grouper or shallow-water grouper quotas are reached.

Measures Applicable to the Recreational Red Grouper Fishery

This proposed rule would establish a 2–fish recreational red grouper bag limit within the existing 5–fish aggregate grouper bag limit (which applies to all grouper combined, excluding goliath grouper and Nassau grouper). Therefore, a recreational angler would be restricted to the bag limit of five grouper, no more than two of which could be red grouper. The 2–fish red grouper bag limit would achieve approximately a 9–percent reduction relative to average recreational harvest during the baseline period, 1999–2001. Although this is slightly less than the target 9.4–percent reduction, it is the closest approximation that could be achieved via the preferred bag limit approach. This minor variation is not expected to have a significant biological impact given that the recreational sector accounts for only about 19 percent of red grouper harvest.

Measures to Address Potential Effort Shift in the Reef Fish Fishery

There are management measures currently in place to control fishing mortality on most of the major reef fish species, e.g., shallow-water and deep-water grouper quotas. Because fishing effort within the reef fish fishery is readily transferable to most reef fish species and because this proposed rule would reduce the allowable harvest of red grouper, additional measures are necessary to ensure that potential effort shift does not adversely affect other reef fish species.

This proposed rule would reduce the shallow-water grouper quota from 9.35 million lb (4.24 million kg) gutted weight, which is equivalent to 9.8 million lb (4.45 million kg) whole weight, to 8.80 million lb (3.99 million kg) gutted weight. This would reduce the shallow-water grouper quota consistent with the reduction in the allowable red grouper harvest; i.e., a reduction of about 0.55 million lb (0.25 million kg). Although red grouper would have a separate quota under this proposed rule, red grouper is also a component of the shallow-water grouper quota. Reducing the shallow-water grouper quota to reflect the reduction in the allowable harvest of red grouper should minimize the potential for any shift of fishing mortality to other shallow-water grouper species. The shallow-water grouper quota includes all groupers other than deep-water groupers, goliath grouper, and Nassau grouper.

Similarly, to guard against effort shift into the deep-water grouper fishery, this proposed rule would reduce the deep-water grouper quota from 1.35 million lb (0.61 million kg), equivalent to 1.60 million lb (0.73 million kg) whole weight, to 1.02 million lb (0.46 million kg) gutted weight. This reduction is intended primarily to address concern that effort shift from the proposed reductions in allowable red grouper and shallow-water grouper harvest could adversely impact yellowedge grouper, the primary component of the deep-water fishery. The reduction is intended to ensure that harvest of yellowedge grouper does not exceed the level recommended by the Reef Fish Stock Assessment Panel, 840,000 lb (381,018 kg), the average harvest level during 1986–2001. Deep-water groupers include speckled hind; yellowedge, misty, Warsaw, and snowy groupers; and scamp after the shallow-water grouper quota is reached.

Finally, this proposed rule would also establish a quota of 0.44 million lb (0.20 million kg), gutted weight, for all tilefishes in the reef fish management unit, combined (tilefish, goldface tilefish, blackline tilefish, anchor tilefish, and blueline tilefish). This quota is equal to the average annual harvest during 1996–2000 and would prevent increases in fishing mortality until additional information is available to improve the evaluation of the status of those stocks.

These actions represent a precautionary approach designed to reduce the probability that a shift in effort from red grouper to other reef fish species would result in an unintended and inappropriate increase in fishing mortality on other reef fish species, some of which are at or near maximum desirable fishing mortality levels.

Classification

At this time, NMFS has not determined whether Secretarial Amendment 1, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Secretarial Amendment 1.

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

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are

contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would establish red grouper biological reference points and stock status criteria; adopt a 10–year red grouper rebuilding plan based on a 3–year interval rebuilding strategy that would include a 9.4 percent reduction in total red grouper harvests for the first 3–year interval; adjust the shallow-water grouper quota by an amount equal to the reduction in the red grouper quota; set the recreational bag limit at two red grouper out of the five aggregate grouper bag limit per person; close the commercial shallow-water grouper fishery when the commercial red grouper quota or the shallow-water grouper quota is reached, whichever comes first; and establish deep-water grouper and tilefish quotas.

The primary objective of the proposed rule is to optimize the net benefits to the Nation of the shallow-water grouper stocks by rebuilding the red grouper component to a stock level capable of supporting optimum yield.

The proposed rule contains no changes in record-keeping or compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule would impact both the commercial and recreational participants that traditionally harvest shallow-water grouper species and dealers who receive these species from commercial harvesters.

There are currently approximately 1,204 active commercial reef fish permits and an unknown number of other permits in the process of being renewed. Examination of 2000 logbook data showed that of vessels with commercial reef fish permits, 782 vessels in Florida and 207 in other Gulf states landed reef fish with vertical line gear in 2000. An additional 155 vessels in Florida and 33 in other Gulf states were identified as having landed reef fish using longline gear in 2000. Furthermore, 55 vessels, all in Florida, reported landing reef fish using fish traps. For all vessels landing reef fish, a total of 546 vessels participate in the shallow-water grouper fishery on a consistent basis. Of these vessels, 138 used longline gear, 353 used vertical line gear, and 55 used fish traps. Within the commercial red grouper fishery, longline gear accounted for 59 percent of landings, handline gear accounted for 24 percent, and fish traps accounted for 16 percent. The corresponding percentages for the commercial gag are: 25 percent for longline gear, 73 percent for handline gear, and 2 percent for fish traps. Other gear types account for a minuscule portion of the commercial landings of these species. These are the two most significant species in the shallow-water grouper fishery. The measures proposed in this rule would directly or indirectly affect all these vessels.

Although the proposed rule would directly or indirectly affect all commercial vessels that participate in the fishery, the impacts would affect vessels that operate in the eastern Gulf (Florida) more significantly because the bulk of the grouper fishery is in this area. Among the Florida vessels, the longline vessels would bear most of the cost of the proposed measures, particularly with respect to red grouper. High-volume vertical line and fish trap vessels would also bear a disproportionate share of the burden. Estimates of gross annual receipts per vessel for vessels in the reef fish fishery are as follows: $67,979 for high-volume vessels using vertical line gear in the eastern Gulf; $24,588 for low-volume vessels using vertical line gear in the eastern Gulf; $116,989 for high-volume vessels using bottom longline gear gulfwide; $87,635 for low-volume vessels using bottom longline gear gulfwide; $93,426 for high-volume vessels using fish traps (Florida only); and $86,039 for low-volume vessels using fish traps (Florida only). Estimates of net annual income per vessel (defined as gross receipts less routine trip costs) for vessels in the reef fish fishery are as follows: $23,822 for high-volume vessels using vertical line gear in the eastern Gulf; $4,479 for low-volume vessels using vertical line gear in the eastern Gulf; $25,452 for high-volume vessels using bottom longline gear gulfwide; $14,978 for low-volume vessels using bottom longline gear gulfwide; $19,409 for high-volume vessels using fish traps (Florida only); and $21,025 for low-volume vessels using fish traps (Florida only).

The proposed rule would also affect fish dealers that receive groupers by way of purchase, barter, or trade. About 431 dealers located in the five Gulf states receive groupers. Of this total, approximately 87 dealers located in Florida would be most directly affected by the proposed rule. Of these 87 dealers, approximately 54 dealers generally receive less than 10,000 lb (4,536 kg) of grouper per year while 11 dealers generally receive more than 80,000 lb (36,287 kg) of grouper per year. Among the longline vessels operating in the fishery, more vessels reported sales to dealers in Madiera Beach (54 vessels) and St. Petersburg (34 vessels) than any other locations. Information on the average number of employees per reef fish dealer is not known. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast has been estimated at approximately 700 individuals, both part and full time. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive exercise than dealing, therefore requiring greater employment. Therefore, it is assumed that total dealer employment is less than 700 individuals.

The proposed measures for the recreational sector would also affect all for-hire vessels that operate in the reef fish fishery. As of July 2003, a total of 1,377 reef fish permits had been issued to the recreational for-hire sector, which includes both charter boats and headboats. Similar to the situation with the commercial sector, most of the effects would be borne by those for-hire vessels that operate in Florida. This number, however, cannot be determined with certainty since the registration address does not necessarily indicate the area of operation. Further, identifying the number of vessels dependent upon shallow-water grouper species is not possible given available data. Based on fees, number of passengers, and number of trips, average annual receipts are estimated at $68,000 for charter vessels and $324,000 for headboats. Major activity centers for charter boats in Florida are Naples, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, Pensacola, and the Florida Keys. The major activity centers for headboats are Clearwater, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, and the Florida Keys. Keys vessels, however, depend more on king mackerel, billfish, and dolphin than grouper species. Additional impacts from the alternatives proposed in this amendment would be borne by the extended communities at the activity centers and the businesses therein. However, these entities cannot be quantified due to lack of sufficient data.

The Small Business Administration (SBA) considers a commercial fishing business to be a small business entity if the business is independently owned and operated, is not dominant in its field of operation, and has receipts of up to $3.5 million annually. The benchmark for a small business in the for-hire fishery is a firm with receipts of up to $6 million per year. The SBA benchmark for a fish dealer or

processing facility is a business with fewer than 500 employees. Given the revenue and employment information provided above, all the business entities potentially affected by the proposed rule are considered small entities.

The proposed biological reference points and stock status criteria would not directly affect fishery behavior and, thus, would not produce any direct economic impacts. The proposed quota reductions and associated quota closure for the commercial shallow-water grouper fishery are expected to take effect by mid-November of the first year of implementation. This quota closure is estimated to reduce annual net revenues by 11 percent for longline vessels, 4 percent for vertical line vessels, and 5 percent for fish trap vessels. If vessels can successfully increase their landings and revenues more than their costs by increasing their number of trips, net income losses due to the quota closure provision can be partially offset. However, this would cause the quota to be reached faster every year, inducing a derby that may eventually result in decreases in ex-vessel prices and further erode vessel profits. The proposed quotas for tilefish and deep-water groupers match the historical commercial harvests for the species so that these particular measures are not expected to reduce the profits of commercial vessels.

The proposed red grouper bag limit is not expected to substantially affect the revenues of for-hire vessels, although trip cancellations by recreational anglers may occur as a result of the change. However, only 5 percent of charter vessels operating off the Florida Gulf coast have reported targeting one species, while 36 percent reported targeting three or fewer species, and 90 percent reported targeting eight or fewer species. About 29 percent of charter vessels have reported not targeting specific species. None of the headboats in the Florida Gulf target only one species, 60 percent target four or less species, and 41 percent do not target specific species. Since the proposed bag limit change is specific to red groupers and, therefore, other species may still be targeted or caught, trip cancellations as a result of the red grouper bag limit reduction are expected to be relatively few. Fishing trip costs of for-hire vessels are also not likely to increase, since these vessels are expected to continue to fish in the same areas they traditionally fish. Total effects of the proposed rule on the net revenue or profit for the for-hire vessels in Florida, however, cannot be determined with certainty.

The profit profile for dealers is not known. The projected reduction in ex-vessel sales ($2.248 million) as a result of the proposed rule equals approximately 11.5 percent of total shallow-water grouper revenues. It is unlikely, however, that any dealer with substantial business operations would be wholly dependent upon harvests of shallow-water grouper. Thus, dealer business failure as a result of quota reductions is not expected to be substantial.

Three alternatives, including the no action alternative, were considered relative to the proposed specification of red grouper maximum sustainable yield. The proposed alternative would establish red grouper maximum sustainable yield as a range whereas each of the two additional action alternatives specify the reference points alternately as the lower and upper bounds of the proposed range. Since specification of the maximum sustainable yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation and would not directly affect fishery behavior, the proposed alternative was selected as best accounting for the uncertainty associated with the spawner-recruit relationship for this species.

Three alternatives, including the no action alternative, were considered relative to the proposed specification of red grouper minimum stock size threshold. Since specification of the minimum stock size threshold is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the minimum stock size threshold than the proposed threshold, while another would establish a less conservative threshold. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation and would not directly affect fishery behavior, the proposed alternative was selected because it follows the recommendations of the NMFS Technical Guidance.

Four alternatives, including the status quo alternative, were considered relative to the proposed specification of red grouper maximum fishing mortality rate. One alternative would establish a more conservative specification of the maximum fishing mortality rate, while the other three alternatives would establish a less conservative threshold. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation, the proposed alternative was selected because it follows the recommendations of the NMFS Technical Guidance.

Three alternatives, including the no action alternative, were considered relative to the proposed specification of red grouper optimum yield. Since specification of the optimum yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the threshold, while another would establish a less conservative threshold. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation, the proposed alternative was selected because it follows the recommendations of the NMFS Technical Guidance.

Five alternatives, including the no action alternative, were considered relative to the proposed red grouper rebuilding plan. Since specification of a rebuilding plan is a required component of a fishery management plan for a resource that has been identified as overfished, the no-action alternative is not a viable alternative. Three alternatives would establish the same recovery period, 10 years, but specify different annual allowable biological catches. One of these alternatives would allow a higher initial catch than the proposed alternative, thereby inducing lower short-term adverse impacts than the proposed alternative. This alternative would not, however, require mandatory evaluations of the allowable biological catch every 3 years, as the proposed alternative would, and may not allow harvests to increase during the recovery period, as the proposed alternative would. Thus, this alternative may result in increased costs over the recovery period relative to the proposed alternative. The two alternatives that would establish lower catches than the proposed alternative would result in increased adverse impacts relative to the proposed alternative. An additional alternative would establish a shorter recovery period than the proposed alternative, requiring lower harvest levels, thereby accelerating the recovery schedule but at greater short- term adverse economic impacts. The proposed alternative, therefore, best accomplishes NMFS' objectives while minimizing adverse economic impacts.

Three alternatives, including the no action alternative, were considered relative to the proposed reduction in the shallow-water grouper quota by an amount equal to the reduction in the red grouper total allowable catch. Two alternatives would reduce the shallow-water grouper quota by amounts greater than the proposed alternative and would not, therefore, decrease the adverse impacts of the proposed rule. The no action alternative could lead to greater mortality of red grouper as a result of catch and release mortality, therefore jeopardizing the recovery of the species.

Five alternatives, including the proposed alternative and the no-action alternative, were considered relative to commercial quota closure. The no-action alternative would close the commercial fishery for shallow-water grouper when the aggregate quota is reached. This would result in less adverse economic impacts than the proposed alternative but would result in excessive red grouper mortality if the red grouper quota is reached before the shallow-water grouper quota is met. One alternative would close the commercial red grouper fishery when this quota is reached, but allow the fishery for other shallow-water grouper species to continue until the aggregate quota is reached. While this alternative would result in less short-term adverse economic impacts than the proposed alternative, red grouper would continue to be caught as a bycatch species, thereby resulting in total red grouper mortality exceeding the quota. In addition to closing the commercial red grouper fishery, another alternative would close fishing for all shallow-water grouper species in certain areas of the Gulf when the red grouper quota is met. Multiple area closure options were considered, up to and including closure of the entire Gulf, which would match the proposed alternative. For those options that are not Gulf-wide, the resultant short-term adverse impacts would be less than those of the proposed alternative. These options would potentially allow, however, excessive mortality of red grouper since red grouper would continue to be caught as bycatch. The final alternative would allow continued red grouper harvest if the red grouper allocation has not been met when the shallow-water grouper aggregate quota has been achieved. This alternative, however, would result in the shallow-water grouper aggregate quota being exceeded. Since these other alternatives would result in either excessive red grouper or excessive total shallow-water grouper mortality, only the proposed alternative is consistent with the NMFS' objectives.

Four alternatives, including the proposed alternative, were considered relative to fixed shallow-water grouper closed seasons. The proposed alternative is the status quo February 15 through March 15 closed season on red grouper, gag, and black grouper. One alternative would replace this closure with a March 1 through May 31 closure, and would apply the closure to either the same three species or all shallow-water grouper species. This alternative, regardless of the species options, would be more stringent than necessary to reduce red grouper harvests and protect gag spawning aggregations and would result in greater economic losses than the proposed alternative. A second alternative incorporates the same species options as the first rejected alternative, but does not identify a specific closure period. Depending upon the period chosen, the resultant impacts could be less than or greater than those of the proposed alternative. However, the proposed alternative was selected since the period encompassed best meets the dual purpose of reducing red grouper harvest and protecting gag spawning aggregations. A final alternative would eliminate the fixed closure. While this alternative would also eliminate the short- term adverse impacts of the proposed alternative, the desired reduction in red grouper harvests and protection of gag would not be accomplished.

Five alternatives, including the proposed alternative, were considered for commercial grouper trip limits. The proposed alternative is the status quo no commercial grouper trip limits. The remaining alternatives would either impose trip limits that applied throughout the year, or would be triggered upon shallow-water grouper harvests reaching 75 percent of the aggregate quota. Each of these alternatives would result in greater adverse economic impacts than the proposed alternative and are, therefore, not consistent with NMFS' intent.

Approaches for constraining the recreational grouper harvest to its allocation included closures, bag limits, and minimum size limits. In addition to the proposed alternative, which would maintain the status quo of no fixed closed season for the recreational grouper fishery, four alternatives were considered relative to recreational closures. In addition to options for applying the closure to selected species in the shallow-water grouper complex or the entire complex, each of these alternatives specified fixed closed seasons. One alternative additionally limited the closure to a specific region of the Gulf as opposed to the entire Gulf. Allowing the recreational fishery to remain open year-round, as would be accomplished by the proposed alternative in combination with appropriate bag and size limits, was determined to produce the least adverse economic impacts on the fishery. Thus, the proposed alternative was determined to best achieve NMFS' objectives.

Four alternatives were considered for the recreational grouper bag limit. While the proposed alternative would establish a limit of two red grouper out of the aggregate five-fish shallow-water grouper bag limit, one alternative would establish a similar limit on gag in addition to the red grouper limit. This alternative would, thus, be more restrictive than the proposed alternative and increase adverse impacts. Additionally, this alternative would exceed the protection currently believed necessary for gag. Another alternative would not change the red grouper limit but would instead reduce the total aggregate bag limit. Available options, however, would result in either or both reductions in red grouper harvests that are greater than necessary or reductions in the harvest of other grouper species that are not currently justified. Thus, this alternative would increase the negative impacts on the fishery. The final alternative, the status quo, would not achieve the required red grouper harvest reductions. The proposed alternative, therefore, best achieves the necessary harvest reductions at the least adverse impact.

Four alternatives were considered to each of the proposed alternatives to retain the commercial and recreational red grouper minimum size limits at their current specification of 20 inches (50.8 cm) total length. The larger minimum size limits, however, lead to harvest reductions that exceed the required reductions, generate increased discard mortality, and increase expected losses relative to the proposed alternatives. Thus, the proposed alternatives best achieve NMFS' objectives at the least adverse impact.

With regards to the proposed alternative for specifying the fishing year, the status quo provides that the fishing year for all reef fish begins January 1 each year. Alternatives to the status quo provide for a fishing year to start after a fixed commercial season for any reef fish or for the grouper fishery only. These alternatives have no immediate impacts on fishing participants. Maintaining the status quo, however, provides stability and helps eliminate future uncertainty associated

with changes in the start of the open season for various species within the grouper fishery in particular and reef fish fishery in general.

The proposed rule specifies a quota for tilefish and reduces the deep-water grouper quota from its current level, which has never been met, to the average annual harvest from 1996–2000, with the intent to minimize the potential adverse impacts of participants in the shallow-water grouper fishery shifting effort to the deep-water species. In addition to options encompassing different quota levels and the status quo alternative, significant alternatives to the proposed rule come in two forms. One form sets different quota levels for deepwater groupers and tilefish independently, while the other form combines deep-water groupers and tilefish and provides for different quota levels for the aggregate. The proposed independent quotas for each group fall between the extremes of the alternative options and, thus, would be expected to result in less adverse impacts than the lower options, and more adverse impacts than the higher options. However, the proposed quotas are equal to the average commercial harvest for these species, so actual adverse impacts on fishing participants are expected to be minimal.

Copies of the IRFA and RIR are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: February 13, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

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

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

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

2. In § 622.39, paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper--5 per person per day, but not to exceed 2 red grouper per person per day or 1 speckled hind or 1 Warsaw grouper per vessel per day.

* * * * *

3. In § 622.42, paragraphs (a)(1)(ii) and (iii) are revised and paragraph (a)(1)(iv) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, Warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined--1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined -8.80 million lb (3.99 million kg), gutted weight, that is, eviscerated but otherwise whole. Within the shallow-water grouper quota there is a separate quota for red grouper--5.31 million lb (2.41 million kg), gutted weight. When either the shallow-water grouper quota or the red grouper quota is reached, the entire shallow-water grouper fishery will be closed and the closure provisions of § 622.43(a) introductory text and § 622.43(a)(1)(i) apply to the entire shallow-water grouper fishery.

(iv) Tilefishes (i.e., tilefish and goldface, blackline, anchor, and blueline tilefish) combined--0.44 million lb (0.20 million kg), gutted weight, that is, eviscerated but otherwise whole.

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[FR Doc. 04–3754 Filed 2–19–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 34
Friday, February 20, 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

Animal and Plant Health Inspection Service

[Docket No. 01–009–6]

Wildlife Services; Availability of an Environmental Assessment and Decision/Finding of No Significant Impact for Oral Rabies Vaccine Program on National Forest System Lands

AGENCY: Animal and Plant Health Inspection Service, USDA.

COOPERATING AGENCY: Forest Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we have prepared an environmental assessment and proposed decision/finding of no significant impact relative to oral rabies vaccination programs on National Forest System lands in several States. Since the publication of our original environmental assessment and decision/finding of no significant impact (2001), a subsequent supplemental decision/finding of no significant impact (2002), and a supplemental environmental assessment and decision/finding of no significant impact (2003), we have determined there is a need to further expand the oral rabies vaccine program to include National Forest System lands, excluding Wilderness Areas, to effectively stop the westward and northward spread of the rabies virus across the United States and into Canada. The purpose of the environmental assessment and decision/finding of no significant impact is to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of an expanded oral rabies vaccine program.

DATES: We will consider all comments that we receive on or before March 22, 2004. Unless we determine that new substantial issues bearing on the effects of the proposed expansion of the oral rabies vaccine programs have been raised by public comments on this notice, the proposed decision/finding of no significant impact will become final and take effect upon the close of the comment period.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–009–6, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–009–6. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–009–6" on the subject line.

To obtain copies of any of the documents discussed in this notice, contact Tara Wilcox, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; phone (301) 734–7921, fax (301) 734–5157, or e-mail: *Tara.C.Wilcox@aphis.usda.gov*. When requesting copies, please specify the document or documents you wish to receive.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Slate, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301–8548; (603) 223–6832.

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On December 7, 2000, a notice was published in the **Federal Register** (65 FR 76606–76607, Docket No. 00–045–1) in which the Secretary of Agriculture declared an emergency and transferred funds from the Commodity Credit Corporation to APHIS–WS for the continuation and expansion of oral rabies vaccination (ORV) programs to address rabies in the States of Ohio, New York, Vermont, Texas, and West Virginia.

On March 7, 2001, we published a notice in the **Federal Register** (66 FR 13697–13700, Docket No. 01–009–1) to solicit public involvement in the planning of a proposed cooperative program to stop the spread of rabies in the States of New York, Ohio, Texas, Vermont, and West Virginia. The notice also stated that a small portion of northeastern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts, and discussed the possibility of APHIS–WS cooperating in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, Virginia, and Alabama. The March 2001 notice contained detailed information about the history of the problems with raccoon rabies in eastern States and with gray fox and coyote rabies in Texas, along with information about previous and ongoing efforts using ORV baits in programs to prevent the spread of the rabies variants or "strains" of concern.

Subsequently, on May 17, 2001, we published in the **Federal Register** (66 FR 27489, Docket No. 01–009–2) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental effects of the ORV programs described in our March 2001 notice. We solicited comments on the EA for 30 days ending on June 18, 2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

Finally, on August 30, 2001, we published a notice in the **Federal Register** (66 FR 45835–45836, Docket No. 01–009–3) in which we advised the public of APHIS' decision and finding of no significant impact (FONSI) regarding the use of oral vaccination to control specific rabies virus strains in raccoons, gray foxes, and coyotes in the United States. That decision allows APHIS–WS to purchase and distribute ORV baits, monitor the effectiveness of the ORV programs, and participate in implementing contingency plans that may involve the reduction of a limited number of local target species populations through lethal means (*i.e.*, the preferred alternative identified in the EA). The decision was based upon the final EA, which reflected our review and consideration of the comments received from the public in response to our March 2001 and May 2001 notices and information gathered during planning/scoping meetings with State health departments, other State and local agencies, the Ontario Ministry of Natural Resources, and the Centers for Disease Control and Prevention.

Following the August 2001 publication of our original decision/FONSI, we determined there was a need to expand the ORV programs to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. Accordingly, we prepared a supplemental decision/FONSI to document the potential effects of expanding the programs. We published a notice announcing the availability of the supplemental decision/FONSI in the **Federal Register** on July 5, 2002 (67 FR 44797–44798, Docket No. 01–009–4).

Following the publication of the supplemental decision/FONSI in July 2002, we determined the need to further expand the ORV program to include the States of Georgia and Maine to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. To facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of the expanded ORV programs, we prepared a supplemental EA that addresses the inclusion of Georgia and Maine, as well as the 2002 inclusion of Kentucky and Tennessee, in the ORV program. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on June 30, 2003 (68 FR 38669–38670, Docket No. 01–009–5).

Recently, we have determined the need to further expand the ORV program to include portions of National Forest System lands, excluding Wilderness Areas, within several eastern States. The National Forest System lands where APHIS–WS involvement would be expanded may be located within the States of Maine, New York, Vermont, New Hampshire, Pennsylvania, Ohio, Virginia, West Virginia, Tennessee, Kentucky, Alabama, Georgia, Florida, North Carolina, South Carolina, Massachusetts, Maryland, and New Jersey. Currently, cooperative rabies surveillance activities and/or baiting programs are already being conducted on various land classes, with the exception of National Forest System lands, in many of the aforementioned States. The programs' primary goals are to stop the spread of a specific raccoon rabies variant or "strain" of the rabies virus. If not stopped, this strain could potentially spread to much broader areas of the U.S. and Canada and cause substantial increases in public and domestic animal health costs because of increased rabies exposures. Numerous National Forest System lands are located within current and potential ORV barrier zones. To effectively combat this strain of the rabies virus, it has become increasingly important to bait these large land masses. The EA analyzes the proposed action and several alternatives with respect to a number of environmental and other issues raised by involved cooperating agencies and the public.

The August 2001 EA and decision/FONSI, the July 2002 supplemental decision/FONSI, the June 2003 supplemental EA and decision/FONSI, and this EA and decision/FONSI for expanded ORV program activities on National Forest System lands that are the subject of this notice have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 13th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3721 Filed 2–19–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, Rio Grande National Forest, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service (FS), Rio Grande National Forest will prepare an environmental impact statement (EIS) on the submission of an Application For Transportation and Utility Systems and Facilities on Federal Lands (Application) by the Leavell-McCombs Joint Venture. This Application, if authorized, would permit a perpetual easement for year-round permanent road access, obtain or modify utility easements, and modify easement terms for Alberta Lake access for the proposed Village at Wolf Creek (Village). The Village is a resort community proposed for construction and operation solely within 287.5-acres of privately owned land located entirely within the Rio Grande National Forest adjacent to Wolf Creek Ski Area. The road would cross national forest lands from Colorado State Highway 160 to the Village's private in-holdings. Similarly, the utilities easements would cross FS land to provide the necessary infrastructure to serve the future Village residents and businesses. The modification of the existing private lands easement terms for Alberta Lake access is proposed to better accommodate the Village design and to create improved public access to national forest lands. Without the permanent road easement and utilities easements the Village could not be accessed nor supplied with the necessary infrastructure to support its' construction or operation.

The FS invites written comments and suggestions on the scope of the analysis. The FS also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the proposed project must be received no later than April 5, 2004.

ADDRESSES: Send written comments to Mr. Stephen Brigham, NEPA Coordinator, USDA–FS, Rio Grande National Forest, Divide Ranger District, 13308 West Hwy 160, Del Norte, CO 81132. Electronic mail (e-mail) may be sent to *sbrigham@fs.fed.us* and a Fax may be sent to (719) 657–6035.

FOR FURTHER INFORMATION CONTACT: Stephen Brigham, NEPA Coordinator, Divide Ranger District, (719) 657–3321. Refer to **SUPPLEMENTARY INFORMATION** regarding public disclosure of submitted comment information.

SUPPLEMENTARY INFORMATION: The Wolf Creek Ski Area and the general Mineral County area are not served by lodging facilities or overnight accommodations on the mountain at Wolf Creek Ski Area. The nearest lodgings are near South Fork or Pagosa Springs, CO, which are more than a 20-minute drive east or west at the base of Wolf Creek Pass. Approval of the Application would result in the ultimate construction and operation of the Village. The Village would provide for year-round guest accommodations and services adjacent to the ski area on the 287.5-acre site.

On May 14, 1987, the FS conveyed to the Leavell-McCombs Joint Venture 287.5-acres of property, the proposed location of the Village, in exchange for property in Saguache County, Colorado. The 287.5-acres is entirely surrounded by Federal lands; a condition that was recognized at the time the land exchange was approved. During the land exchange negotiations it was understood that the Leavell-McCombs Joint Venture would eventually develop the 287.5-acres for uses compatible with the existing Wolf Creek Ski Area and such development would be regulated by Federal, state, and Mineral County agencies with jurisdiction. As a condition of approval, the Regional Forester specifically required that the FS retain an easement to "assure that development of the Federal land conveyed would be compatible with the Wolf Creek Ski Area. The Leavell-McCombs Joint Venture is now prepared to develop the Village on their 287.5-acre in-holding and requires road and utility access to the land."

The permanent road easement would allow the construction and operation of an all weather, year-round access road that would not exceed 2,350 feet in length or a width greater than 60 feet. The road would be constructed to FS specifications and approximately 30 feet in width. Vehicle traffic would consist of passenger vehicles, buses, and other vehicles and transport necessary to develop, construct, operate, and support the residents and businesses associated with the Village. The Application would also grant two 10-foot wide and two 20-foot wide permanent utility easements for the installation, operation, maintenance, repair, and replacement of electrical transmission lines and facilities; television cables, communication cables and lines, fiber optic lines, and other utilities as required to serve the Village. An additional component of the Application is an amendment to the easement granted to the FS for an alternative public access route to Alberta Lake.

Proposed Action: The Leavell-McCombs Joint Venture has submitted an Application to the FS for approval. Application approval by the FS would grant a perpetual easement for the construction and permanent operation of a year-round all weather road, four permanent utility easements, and an alternative route across Village property for public access to Alberta Lake. Consequently, the 287.5-acres of Leavell-McCombs Joint Venture lands would be available for development.

The responsible Official is the Forest Supervisor, Rio Grande National Forest, 1803 West Highway 160, Monte Vista, CO 81132. The National Environmental Policy Act (NEPA) decision to be made by the FS official is whether or not to authorize the Application For Transportation and Utility Systems and Facilities on Federal Lands as proposed by the Leavell-McCombs Joint Venture, or alternatives to the proposed roadway and utilities easements. FS alternatives would include the No-Action Alternative, which in effect is a FS denial of the Application.

The scoping process will include public meetings and interaction with various Federal, State, and local agencies. Information regarding the place and time of the public scoping meetings will be announced in area media, as well as posted on the FS Rio Grande National Forest Internet site [*http//www.fs.fed.us./r2/riogrande/*]. Scoping meetings are expected to occur during the week of March 15, 2004. Scoping meetings will be held in Creede, Pagosa Springs, and South Fork, CO. Additional public meetings will be held once the Draft EIS is available for review.

Preliminary issues include the following:

- Impacts to the socioeconomic structure in the region.
- Impacts to water resources.
- Impacts to existing infrastructure (road capacities and power utilities and capacities).
- Impacts to terrestrial and aquatic habitats and species.
- Impacts to recreation use, as well as, the scenic resources associated with the area.

In addition to evaluating these preliminary issues, the environmental evaluation will assess the potential effects from the proposed project on minority and low-income populations. The cumulative impacts of the FS decision are expected to be a substantial part of the impacts analysis.

In addition to the FS Application, other agencies also have requirements to fulfill prior to implementation of the Proposed Action. Requirements include:

- Compliance with Section 7 of the Endangered Species Act that will entail the submission of a Biological Assessment to the US Fish and Wildlife Service.
- Compliance with Section 106 of the National Historic Preservation Act.
- Compliance with Section 404 of the Clean Water Act and obtaining a Nation Pollution Prevention Discharge Elimination System Permit.
- Final Plat approval for the Mineral County Public Utilities Department.

Comments Requested

This Notice of Intent initiates the scoping process that guides the development of the EIS. The FS invites written comments and suggestions on the proposed action, including any issues to consider, as well as any concerns relevant to the analysis. In order to be most useful, scoping comments should be received within 45 days of publication of this Notice of Intent. Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law, but persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited

circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days. All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Upon completion of the Draft EIS the document will be provided to the public for review and comment. Comments and FS responses will be addressed and contained in the Final EIS.

Dated: February 13, 2004.

Peter L. Clark,

Forest Supervisor.

[FR Doc. 04–3677 Filed 2–19–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

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

ACTION: Proposed deletions from Procurement List.

SUMMARY: The Committee is proposing to delete from the Procurement List services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: March 21, 2004.

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

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

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

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

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

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

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

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Operation of Recycling Center, Minot Air Force Base, North Dakota.
NPA: Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota.
Contract Activity: Department of the Air Force, Minot Air Force Base, North Dakota.
Service Type/Location: Parts Sorting, Defense Reutilization and Marketing Office, Fort Lewis, Washington.
NPA: Morningside, Olympia, Washington.
Contract Activity: Defense Logistics Agency, Battle Creek, Michigan.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–3744 Filed 2–19–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

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

ACTION: Additions to Procurement List.

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

EFFECTIVE DATE: March 21, 2004.

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

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

SUPPLEMENTARY INFORMATION: On December 19, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 70761) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

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

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

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

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

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center, 3144 Clement Avenue, Alameda, California.
NPA: Rubicon Programs, Inc., Richmond, California.
Contract Activity: Naval Facilities Engineering Command, Alameda, California.

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

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–3745 Filed 2–19–04; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Border Project Subcommittee of the Arizona State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Border Project Subcommittee of the Arizona State Advisory Committee will convene at 12 p.m. and adjourn at 4 p.m., on March 5, 2004 at the Radisson Hotel, 181 West Broadway, Tucson, Arizona 85701. The purpose of the meeting is to develop and plan, as part of the 4-State joint border project, a border hearing in Nogales, Arizona.

Persons desiring additional information, or planning a Presentation to the Committee, should contact Thomas V. Pilla, Civil Rights Analyst of the Western Regional Office, 213–894–3437 (TDD/213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 5, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–3729 Filed 2–19–04; 8:45 am]

BILLING CODE 6335–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China

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

ACTION: Notice of amended preliminary antidumping duty determination of sales at less than fair value: Polyethylene Retail Carrier Bags from the People's Republic of China.

EFFECTIVE DATE: February 20, 2004.

FOR FURTHER INFORMATION CONTACT: Kristin Case (United Wah) or Thomas Schauer (Rally Plastics), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3174 and (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Significant Ministerial Error

The Department of Commerce (the Department) is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of polyethylene retail carrier bags from the People's Republic of China (PRC) to reflect the correction of significant ministerial errors it made in the margin calculations regarding Dongguan Huang Jiang United Wah Plastic Bag Factory (United Wah) and Rally Plastics Company, Limited (Rally Plastics), pursuant to 19 CFR 351.224(g)(1) and (g)(2). A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. See 19 CFR 351.224(f). A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted–average dumping margin calculated in the original (erroneous) preliminary determination or (2) a difference between a weighted–average dumping margin of zero or *de minimis* and a weighted–average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the antidumping rates for two respondents, Rally Plastics and United Wah. See discussion below.

We have also revised the antidumping rate for the following parties: Beijing Lianbin Plastics and Printing Company Limited (Beijing Lianbin); Dongguan Zhongqiao Combine Plastic Bag Factory (Dongguan Zhongqiao); Good–in Holdings Limited (Good–in Holdings); Guangdong Esquel Packaging Company, Limited (Guangdong Esquel); Nan Sing Plastics, Limited (Nan Sing); Ningbo Fanrong Plastic Products Company Limited (Ningbo Fanrong); Ningbo Huansen Plasthetics Company, Limited (Ningbo Huansen); Rain Continent Shanghai Company Limited (Rain Continent); Shanghai Dazhi Enterprise Development Company, Limited (Shanghai Dazhi); Shanghai Fangsheng Coloured Packaging Company Limited (Shanghai Fangsheng); Shanghai Jingtai Packaging Material Company, Limited (Shanghai Jingtai); Shanghai Light Industrial Products Import and Export Corporation (Shanghai Light Industrial); Shanghai Minmetals Development Limited (Shanghai Minmetals); Shanghai New Ai Lian Import and Export Company Limited (Shanghai New Ai Lian); Shanghai Overseas International Trading Company, Limited (Shanghai Overseas); Shanghai Yafu Plastics Industries Company Limited (Shanghai Yafu); Weihai Weiquan Plastic and Rubber Products Company, Limited (Weihai Weiquan); Xiamen Xingyatai Industry Company, Limited (Xiamen Xingyatai); Xinhui Henglong; Nantong Huasheng Plastic Products Company, Limited. The change in the rates is appropriate because we are amending some of the preliminary company–specific rates on which we based the average for these companies, as discussed below. See Memorandum to Richard Rimlinger from Kristin Case, *Analysis for the Amended Preliminary Determination of Polyethylene Retail Carrier Bags from the People's Republic of China (PRC): Calculation of PRC–Wide Rate Based on Adverse Facts Available and the Non–Adverse Margin for Respondents Not Selected for Analysis*, dated February 12, 2004.

Ministerial–Error Allegation

On January 26, 2004, the Department published its affirmative preliminary determination in this proceeding. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 3544 (*Preliminary Determination*).

The Department received timely allegations of ministerial errors in the *Preliminary Determination* from the Polyethylene Retail Carrier Bag Committee and its members (the petitioners), Hang Lung Plastic Manufactory (Hang Lung), and Zhongshan Dongfeng Hung Wai Plastic Bag Manufactory (Zhongshan). The Department has reviewed its preliminary calculations and agrees that some of the errors which the parties alleged are ministerial errors within the meaning of 19 CFR 351.224(f).

The petitioners alleged ministerial errors with respect to Rally Plastics, United Wah, and Ming Pack. With respect to Rally Plastics, the petitioners alleged three ministerial errors: (1) the Department should have valued the recycled scrap input reported by Rally Plastics, (2) the Department should not have converted Rally Plastics' reported

international freight because it was reported in U.S. dollars, (3) the Department should have inflated the surrogate–value figure for electricity. With respect to United Wah, the petitioners alleged alleged three ministerial errors: (1) the Department should not have converted United Wah's reported international freight because it was reported in U.S. dollars, (2) the Department should use the quantity variable reported in the U.S. sales database rather than the quantity variable reported in the factors–of–production database, (3) the Department should have inflated the surrogate–value figure for electricity.

We agree with all of the petitioners' ministerial–error allegations concerning Rally Plastics and United Wah. Because correction of these errors results in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted–average dumping margin calculated in the original (erroneous) preliminary determination, we have determined that these ministerial errors are "significant ministerial errors" pursuant to 19 CFR 351.224(g)(1) and (g)(2). Accordingly, we are amending the *Preliminary Determination* to reflect the correction of these significant ministerial errors made in the margin calculations for Rally Plastics and United Wah in that determination, pursuant to 19 CFR 351.224(e).

With respect to Ming Pack, the petitioners alleged three ministerial errors: (1) the Department should have valued the antiblocking additive usage reported by Ming Pack, (2) the Department should have included amounts for virgin resin that are consumed in the production of recycled scrap used to produce the subject merchandise, (3) the Department should have inflated the surrogate–value figure for electricity, (4) the Department should have included two U.S. sales transactions that it did not include in its margin calculation.

We do not agree that we made a clerical error with respect to valuing Ming Pack's recycled scrap. The petitioners allege that we omitted a resin component in our calculation of the surrogate value for Ming Pack's recycled scrap. This was not inadvertent. As we stated in the preliminary determination, "Ming Pak reported the use of recycled resin scrap in the production of its subject merchandise. Because the scrap represented the re–use of purchased raw materials, we only valued the labor and electricity used to recycle the scrap when valuing this input." *See Preliminary Determination*, 69 FR at 3550. Therefore, the alleged omission was intentional and a ministerial–error amendment is not appropriate.

Furthermore, while we agree with the other errors raised by the petitioners with respect to Ming Pack, we find that correction of the alleged errors would increase the margin from 32.19 percent to 32.59 percent. Because the errors alleged do not result in a change of at least five absolute percentage points in the weighted–average dumping margin calculated in the original (erroneous) preliminary determination, we are not amending our preliminary determination with respect to Ming Pack.

Hang Lung alleged that the Department made a ministerial error by not converting its reported foreign–inland-freight expenses from Hong Kong dollars into U.S. dollar values. We reviewed this allegation and found that we inadvertently had not converted the Hong Kong dollar–denominated freight values to U.S. dollar values. Hang Lung's preliminary margin was *de minimis* and, with this correction, the margin remains *de minimis*. Therefore, we are not amending our preliminary determination with respect to Hang Lung.

Zhongshan alleged three ministerial errors: (1) the Department used the incorrect sales figure for allocating usage of plates, cellulose tape, and solvent, (2) the Department allocated cellulose tape usage to all U.S. sales rather than only to sales of printed bags, (3) the Department included the variable for the value of color master in addition to the usage rate for color master.

We agree with Zhongshan's allegations. We find, however, that correction of the alleged errors would reduce the margin from 57.09 percent to 52.82 percent. Because the errors alleged do not result in a change of at least five absolute percentage points in the weighted–average dumping margin calculated in the original (erroneous) preliminary determination nor at least 25 percent of the margin calculated, we are not amending our preliminary determination with respect to Zhongshan.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Tariff Act of 1930, as amended, (the Act).

Amended Preliminary Determination

As a result of our correction of ministerial errors in the Preliminary Determination, we have determined that the following weighted–average dumping margins apply:

Exporter and Producer	Weighted–average percent margin
Hang Lung	0.12
United Wah	25.41
Nantong	18.43
Rally Plastics	18.56
Glopack	4.45
Ming Pak	32.19
Zhongshan	57.09
Beijing Lianbin	18.43
Dongguan Zhongqiao	18.43
Good–in Holdings	18.43
Guangdong Esquel	18.43
Nan Sing	18.43
Ningbo Fanrong	18.43
Ningbo Huansen	18.43
Rain Continent	18.43
Shanghai Dazhi	18.43
Shanghai Fangsheng	18.43
Shanghai Jingtai	18.43
Shanghai Light Industrial	18.43
Shanghai Minmetals	18.43
Shanghai New Ai Lian	18.43
Shanghai Overseas	18.43
Shanghai Yafu	18.43
Weihai Weiquan	18.43
Xiamen Xingyatai	18.43
Xinhui Henglong	18.43
PRC–wide Rate	80.52

The PRC–wide rate has not been amended and applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above. Moreover, the margins for Hang Lung, Glopack, and Zhongshan have not been amended. Further, because the Department's investigation focused on companies which exported their own merchandise, these rates are applicable to companies which manufacture and export their own merchandise.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: February 13, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–3743 Filed 2–19–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Doc. No. 040205039–4039–01, I.D. 012804A]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Notification of aboriginal subsistence whaling quota.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2004, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective February 20, 2004.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Yates, (301) 713–2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5–year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2003 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2004 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2004 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: February 13, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs

[FR Doc. 04–3755 Filed 2–19–04; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, March 5, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–3785 Filed 2–18–04; 9:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, March 12, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–3786 Filed 2–18–04; 9:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, March 19, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–3787 Filed 2–18–04; 9:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, March 26, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–3788 Filed 2–18–04; 9:40 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Suspension of the Price Evaluation Adjustment for Small Disadvantaged Businesses

AGENCY: Department of Defense (DoD).

ACTION: Notice of 1-year suspension of the price evaluation adjustment for small disadvantaged businesses.

SUMMARY: The Director of Defense Procurement and Acquisition Policy has suspended the use of the price evaluation adjustment for small disadvantaged businesses (SDBs) in DoD procurements, as required by 10 U.S.C. 2323(e)(3), because DoD exceeded its 5 percent goal for contract awards to SDBs in fiscal year 2003. The suspension will be in effect for 1 year and will be reevaluated based on the level of DoD contract awards to SDBs achieved in fiscal year 2004.

DATES: *Effected Date:* February 24, 2004.

Applicability Date: This suspension applies to all solicitations issued during the period from February 24, 2004, to February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062, telephone (703) 602–1302; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 10 U.S.C. 2323(e), DoD has previously granted SDBs a 10 percent price preference in certain acquisitions. This price preference is implemented in Subpart 19.11 of the Federal Acquisition Regulation. Section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) amended 10 U.S.C. 2323(e)(3) to prohibit DoD from granting such a price preference for a 1-year period following a fiscal year in which DoD achieved the 5 percent goal for contract awards established in 10 U.S.C. 2323(a). Since, in fiscal year 2003, DoD exceeded this 5 percent goal, use of this price preference in DoD acquisitions must be suspended for a 1-year period, from February 24, 2004, to February 23, 2005.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–3700 Filed 2–19–04; 8:45 am]

BILLING CODE 5001–08–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below. The Board will conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9:30 a.m., February 27, 2004.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: On December 8, 2003, the Department of Energy (DOE) published in the **Federal Register** a notice of proposed rulemaking regarding worker safety and health. On January 29, 2004, the Board submitted a letter to DOE commenting on the proposed rule. The Board requested that the responsible DOE personnel brief the Board within 30 days to detail how DOE plans to address the Board's comments on the proposed rule, pursuant to the Board's jurisdiction, as enumerated in the Atomic Energy Act (42 U.S.C. 2286b(d)). In this hearing, the Board will receive testimony that will satisfy the reporting requirement of the letter as well as receive testimony answering questions raised in a previous public hearing held on February 9, 2004.

The public hearing is independently authorized by 42 U.S.C. 2286b. The Board is holding this meeting with less than one week's notice. As provided in the Board's Sunshine Act rule, 10 CFR 1704.6(b), a majority of the Board's members voted that the Board's business requires the meeting to be held with less than one week's notice.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone to Mr. Pusateri. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on February 26, 2004, will be scheduled for time slots, beginning at approximately 11:30 a.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9:30 a.m. hearing.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC, office. The Board will hold the record open until March 27, 2004, for the receipt of additional materials. A transcript of the hearing will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 18, 2004.

John T. Conway,

Chairman.

[FR Doc. 04–3833 Filed 2–18–04; 1:49 pm]

BILLING CODE 3670–01–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 March 22, 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: February 13, 2004.

Joseph Schubart,

Acting Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Progress Reporting Form for Assistive Technology (AT) Grantees.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary), businesses or other for-profit, not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 2,240.

Abstract: This data collection will be conducted annually to obtain program and performance information from NIDRR state assistive technology grantees on their project activities. The information collected will assist federal NIDRR staff in responding to GPRA. Data will primarily be collected through an internet form.

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 2412. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 04–3671 Filed 2–19–04; 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 March 22, 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: February 13, 2004.

Joseph Schubart,

Acting Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Training Program for Federal TRIO Programs.

Frequency: Biennially.

Affected Public: Not-for-profit institutions (primary), State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 1,020.

Abstract: The Training Program is mandated to provide training for staff and leadership personnel employed or preparing for employment in projects designed to identify individuals from disadvantaged backgrounds, prepare them for a program of postsecondary education, and provide special services for such students pursuing programs of postsecondary education.

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 2457. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 04–3672 Filed 2–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Enhanced Assessment Instruments; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84–368.

DATES: Applications Available: February 20, 2004.

Deadline for Transmittal of Applications: April 5, 2004.

Eligible Applicants: State Educational Agencies; Consortia of State Educational Agencies.

Estimated Available Funds: $4,484,000 in FY 2003 funds.

Estimated Range of Awards: $100,000 to $2,000,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice. In no case will an award be made for less than the amount specified in section 6113(2)(A)(ii) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) 20 U.S.C. 7301b(b)(2).

Project period: Up to 20 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To enhance the quality of assessment instruments and systems used by States for measuring the achievement of all students.

Priorities: These priorities are from Appendix E to the notice of final requirements for this program, published in the **Federal Register** on May 22, 2002 (67 FR 35967, 35979).

Competitive Preference Priorities: For FY 2004, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional 35 points to an application, depending on the extent to which the application meets these priorities.

These priorities are: accommodations and alternate assessments (up to 15 points), collaborative efforts (up to 10 points), and dissemination beyond the original grantee or grant collaborative (up to 10 points).

Note: The full text of these priorities is included in the application package.

Program Authority: 20 U.S.C. 7842 and 20 U.S.C. 7301a.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,484,000 in FY 2003 funds.

Estimated Range of Awards: $100,000 to $2,000,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice. In no case will an award be made for less than the amount specified in section 6113(2)(A)(ii) of the ESEA, 20 U.S.C. 7301b(b)(2).

Project period: Up to 20 months.

III. Eligibility Information

1. *Eligible Applicants:* State Educational Agencies; Consortia of State Educational Agencies.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* An application from a consortium of State Educational Agencies must designate one State Educational Agency as the fiscal agent.

IV. Application and Submission Information

1. *Address to Request Application Package:* Jacqueline Jackson, Student Achievement and School Accountability Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W226, Washington, DC 20202–6132. Telephone: 202–260–0826 or by e-mail: *Jackie.Jackson@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 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. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:*

Section 6112(a) of ESEA (20 U.S.C. 7301a(a)) requires that all funded applications demonstrate that States (or consortia of States) will—

a. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for the assessments described in section 1111(b)(3) of the ESEA;

b. Measure student academic achievement using multiple measures of student academic achievement from multiple sources;

c. Chart student progress over time; or

d. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

Other 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 to evaluate your application. You must limit Part III to the equivalent of no more than 40 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 3 lines per vertical inch) all text and use a font

no smaller than 10 point for all text in the application narrative, including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs.

• Your cover sheet, budget section (chart and narrative), assurances and certifications, response regarding research activities involving human subjects, GEPA 427 response, one-page abstract, personnel resumes, and letters of support are not included in the page limit; however, discussion of how well the application meets the competitive preference priorities and how well the application addresses each of the selection criteria must be included within the page limit.

Our reviewers will not read any pages of your application that—

• Exceed the page limit if you apply these standards; or

• Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: February 20, 2004.

Deadline for Transmittal of Applications: April 5, 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.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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

1. *Selection Criteria:* The selection criteria for this competition are in the application package and were published in Appendix E to the Notice of Final Requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967, 35979).

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 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), one measure has been developed for evaluating the overall effectiveness of the Enhanced Assessment Instruments program: The number of state assessment programs impacted in the first year of adoption of products or services developed under this grant award.

All grantees will be expected to submit an annual performance report documenting their success in addressing this performance measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sue Rigney, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C139, Washington, DC 20202–6132. Telephone: (202)260–0931, or by e-mail *Sue.Rigney@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 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: *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 *www.gpoaccess.gov/nara/index.html*.

Dated: February 17, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–3738 Filed 2–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1855–ZA06

Transition to Teaching

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed priorities and requirements.

SUMMARY: The Deputy Under Secretary for Innovation and Improvement proposes two priorities under the Transition to Teaching program. The Deputy Under Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2004 and later years. We take this action to focus Federal financial assistance on State efforts to create or expand alternative routes to teacher certification and district efforts to streamline teacher hiring systems and processes. We intend for the priorities to help States and districts under this program to lower barriers to certification and hiring and increase the number of highly qualified teachers who are recruited into teaching from nontraditional sources. The Deputy Under Secretary also proposes minimum requirements that are needed for efficient grant competitions for FY 2004 and future years, and to ensure that grantees focus their program funds on direct costs of their projects.

DATES: We must receive your comments on or before March 22, 2004.

ADDRESSES: Address all comments about these proposed priorities and requirements to Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C102, Washington, DC 20202–5942. If you prefer to send your comments through the Internet, use the following address: *Transitiontoteaching1@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts. Telephone: (202) 260–0223 or via Internet: *Thelma.Leenhouts@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:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities and requirements. To ensure that your comments have maximum effect in developing the notice of final priorities and requirements, we urge you to identify clearly the specific proposed priority or requirement 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 and requirements. 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 and requirements in room 3C102, 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 and requirements. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

General

All students need highly qualified and effective teachers if they are to meet their State's challenging academic content standards. Indeed, one of the pivotal components of the No Child Left Behind Act of 2001, Pub. L. 107–110 (NCLB), is the law's insistence that every student be taught by highly qualified teachers. With the beginning of the 2002–2003 school year, NCLB required that all newly hired teachers of core academic subjects who teach in Title I programs be highly qualified, and, by the end of the 2005–2006 school year, NCLB requires that all teachers of core academic subjects in all public schools be highly qualified. Both States and local districts face challenges in meeting these requirements. Some experience difficulty in hiring teachers in general or in specific subject areas. Others may have an adequate supply of teachers, but these teachers might not be highly qualified.

The Transition to Teaching program is designed to address these challenges by helping high-need schools operated by high-need local educational agencies (LEAs) secure and retain the highly qualified teachers that students in those schools need to help them achieve to challenging academic standards. It does so by encouraging the development and expansion of alternative pathways to teacher certification, and by supporting local programs that make use of these alternative pathways to recruit, hire, and retain highly qualified teachers.

Transition to Teaching projects (1) recruit as teachers talented mid-career professionals, recent college graduates who have not completed a teacher preparation program, and qualified school paraprofessionals, and (2) help these individuals to become successfully certified and licensed classroom teachers in high-need schools of high-need LEAs.

In the most recent Transition to Teaching competition, the Department awarded 95 grants to national or regional, Statewide, and local projects to meet the needs of participating high-need LEAs for highly qualified teachers. However, little of these projects' efforts focus on the key role of States in developing or changing policies and implementing strategies that open up certification to talented, non-traditional candidates. Nor do the projects' efforts focus on the role of high-need LEAs in streamlining their hiring systems, timelines, and policies in order to successfully recruit and hire highly qualified teachers.

Establishing these proposed priorities makes it possible to focus funds at both the State level, where decisions on teacher certification requirements are made, and at the district level, where responsibility for hiring resides. These proposed priorities for opening up certification through alternative pathways and for streamlining hiring practices are needed to address the NCLB highly qualified teacher requirement.

Discussion of Proposed Priorities

We will announce the final priorities and requirements in a notice in the **Federal Register**. We will determine the final priorities and requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional requirements or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the 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

Proposed Priority 1—State Projects to Create or Expand and Implement Alternative Pathways to Teacher Certification

This priority supports projects by a State educational agency (SEA) or a consortium of SEAs and the respective teacher certification agency of each State (if different from the SEA), over a project period of up to five years, to create or expand and implement alternative pathways to certification by conducting both of the following activities:

(a) *Create alternatives to the State's traditional certification requirements.* States are encouraged to develop a variety of alternative pathways to certification as important options in their menu of State-approved certification methods to ensure that all teachers are fully certified and highly

qualified. Alternative routes, such as competency-based approaches to certification, permit talented individuals interested in teaching to become fully certified as a result of rigorous assessments of their content and professional teaching competence. Alternate routes such as these provide viable options for attracting a diverse and talented teacher recruitment pool.

(b) *Use the alternative routes to recruit individuals from groups eligible to participate in the Transition to Teaching program.* Funded projects also would, among other things, need to work with participating high-need LEAs to—

(1) Increase the number and quality of mid-career changers, recent college graduates who have not majored in education, and qualified paraprofessionals recruited to teach high-need subjects (such as mathematics, science, and special education) in identified high-need LEAs (which may include LEAs that are charter schools), particularly those in urban and rural areas; and

(2) Provide these newly hired teachers with the support they need to become certified and effective teachers who will choose to make teaching their new long-term profession.

In particular, SEAs receiving project funds must—

(i) Target for recruitment and rigorously screen candidates in areas where there are documented teacher shortages (*e.g.*, mathematics, science, and special education);

(ii) Place prospective teachers only in high-need schools operated by high-need LEAs;

(iii) Prepare individuals for specific positions in specific LEAs and place them in these positions early in the training process;

(iv) Ensure that recruited teachers receive the specific training they need to become fully certified or licensed teachers; and

(v) Have recruited teachers participate in a well-supervised induction period that may include the support of experienced, trained mentors.

Proposed Priority 2—District Projects to Streamline Teacher Hiring Systems, Timelines, and Processes

This priority supports projects by one or more high-need local school districts, over a project period of five years, to streamline their hiring systems, timelines and processes. A participating district will need to conduct both of the following activities:

(a) *Examine its current hiring system, processes, and policies to identify the critical barriers to hiring highly qualified teachers.* The lack of highly qualified teachers in most urban and rural districts has often been attributed to their difficulty in recruiting interested and qualified individuals. However, recent research indicates that the problem may not be one of recruitment but may stem from inefficient and untimely district hiring systems and processes. This is especially true in high-poverty districts and schools—the districts and schools the Transition to Teaching program is targeted to serve. Accordingly, the district would have to examine its current hiring processes and policies and, based upon that examination, identify the critical barriers to hiring highly qualified teachers.

(b) *Design and implement efforts to remove the identified barriers and put in place systems that streamline and revamp the hiring process.* Districts are encouraged to create an efficient and timely applicant hiring process with a strong data tracking system and clear hiring goals. These efforts also will involve negotiating policy reforms that remove critical barriers, such as delayed notification of vacancies and seniority and retirement rules.

Districts also would carry out the requirements of the Transition to Teaching program by recruiting nontraditional candidates, using the streamlined hiring system to hire them for teaching in high-need schools, working with them to achieve full State certification, and retaining them for at least three years.

Discussion of Proposed Requirements for the FY 2004 and Future Year Grant Competitions and Award of Funds

In order to promote both a fair and efficient program competition and appropriate uses of Transition to Teaching program funds, the Deputy Under Secretary proposes the following requirements to govern grant competitions and awards in FY 2004 and later years. For the most part, these proposed requirements are the same as those that the Department announced in the **Federal Register** on June 17, 2002 (67 FR 41221–41224) and successfully used for the FY 2002 Transition to Teaching program competition and grants awarded under it. The Notice Inviting Applications for New Awards for Fiscal Year 2002 on the Internet is available at the following site: *www.gpoaccess.gov/fr/index.html.*

The only exceptions concern (1) a proposal, discussed in the section Application content, that would require each applicant to include in its application a statement that each participating LEA will, rather than intends to, hire project participants, assuming that it has positions to fill and is satisfied that the participants are qualified to teach these subjects, and (2) a proposal discussed in the section Participant eligibility, which is needed to close a loophole that has permitted some grantees to recruit existing teachers into their projects.

1. *Application content.* Section 2313(d)(2)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires applicants to describe in their applications how they will use the funds received to recruit and retain individuals to teach in high-need schools operated by high-need LEAs. In addition, section 2313(i) of the ESEA requires that individuals who participate in training provided under this program serve in a high-need school operated by a high-need LEA for at least three years. In this regard, an implicit purpose of this program and the ESEA as a whole is to help ensure that all students are able to achieve to high standards, principally in the core academic subjects defined in section 9101(11) of the ESEA. To ensure that all grantees properly implement their projects, we propose that each applicant would need to include information in its application, as the Secretary may require, that confirms that it (if it is an LEA), or each LEA with which it will work—

(a) Is a high-need LEA;

(b) Has identified for the grantee the high-need subjects for which teachers are needed; and

(c) Will hire individuals recruited through the project to meet the LEA's teaching needs, assuming that the LEA still has positions to fill and is satisfied that the individuals are qualified to teach those subjects.

2. *Definitions.*

High-need LEA. Section 2102(3) of the ESEA defines "high-need LEA" to mean an LEA that—

(a)(1) Serves not fewer than 10,000 children from families with incomes below the poverty line, or (2) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

We are proposing that an applicant (or a grantee should the grantee wish to add an LEA to a Transition to Teaching project after receiving a grant award) would need to demonstrate to the

Department that each LEA that would participate in the project satisfies the definition of high-need LEA. The applicant (or grantee) would need to do so on the basis of the most recent data available in the year in which the Department would approve the LEA's participation in the project. In this regard, we propose the following for each of these two components of the definition—

• For component (a) of "high-need LEA," the only consistent available data for all LEAs that reflect the statutory requirement for use of the total number or percentage of individuals age 5–17 from families below the poverty line are data from the U.S. Census Bureau. Therefore, we propose to require that the eligibility of an LEA as a "high-need LEA" under component (a) be determined on the basis of the most recent satisfactory Census Bureau data, and we would identify the year of these data to be used in any announcement of a program competition for awards in FY 2004 and future years. (We will provide further information on this subject in the application package for this program that will be available for each competition. This information will include the Internet web site where one may obtain the LEA poverty data that the Census Bureau reports, and the kinds of poverty data the Department will accept for any LEA that is not included on this Internet Web site.)

• For component (b)(1) of the definition of "high-need LEA," we interpret this phrase "not teaching in the academic subjects or grade levels that the teachers were trained to teach" as equivalent to "a high percentage of teachers teaching out of field." The Department does not have available to it suitable data with which to define what a high percentage would be. Therefore, LEAs that rely on component (b)(1) would need to demonstrate to the Department's satisfaction that they have a high percentage of teachers teaching out of field. The Department would review this aspect of an LEA's proposed eligibility on a case-by-case basis. To avoid uncertainty, an LEA might choose instead to try to meet this eligibility test under component (b)(2).

• For component (b)(2) of "high-need LEA," the best data available to the Department on the percentage of teachers with emergency, provisional, or temporary certification or licensing come from the reports on the quality of teacher preparation that States annually provide to the Department in October of each year under section 207 of the Higher Education Act of 1965, as amended (HEA). In these reports, States provide the percentage of teachers in their LEAs teaching on waivers, both on a statewide basis and in high-poverty LEAs. The most recently available data, which were included in the October 2002 State reports, indicate that the national average of teachers on waivers in high-poverty LEAs is eight (8) percent.

Based on information in these reports, we would publish the most current national percentage of uncertified teachers in high-poverty LEAs in any announcement of a program competition for awards in FY 2004 and future years. To satisfy component (b)(2) of the definition of high-need LEA, an LEA would need to be able to confirm that, at the time it would participate in a Transition to Teaching project, it has at least the percentage of uncertified teachers as the Department announces is a "high percentage" based on the most currently available HEA section 207 State reports.

High-need subject. For purposes of the Transition to Teaching program, we propose that a high-need subject means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, geography, special education, and English as a second language (ESL). These subjects include the "core academic subjects" specified in section 9101(11) of the ESEA and the subjects of special education and ESL. We propose to include these two additional subjects because of the particular need that many high-need LEAs have for teachers in these two areas who can help students with disabilities and English language learners to become proficient in the ESEA core academic subjects.

High-need SEA. Section 2313(c) of the ESEA requires the Department to give priority in awarding grants under the program to applications from "a partnership or consortium that includes a high-need State educational agency or local educational agency." However, the ESEA does not define the term high-need SEA. As was the case for the FY 2002 competition, for purposes of this priority we propose to define a high-need SEA as an SEA of a State that includes at least one high-need LEA. While our definition of this term might enable all SEAs to be considered high-need SEAs, given the proposed requirement that all applications identify the high-need LEA that would participate in the project, any project that includes one of these LEAs as a partner would already be eligible to receive this statutory priority. Hence, we see little value in proposing a more narrow definition of high-need SEA.

3. *Application review process.* Section 2313(b) of the ESEA provides that an eligible applicant for a Transition to Teaching grant must be—

(a) An SEA;

(b) A high-need LEA;

(c) A for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified teachers, in a partnership with a high-need LEA or with an SEA;

(d) An institution of higher education (IHE), in a partnership with a high-need LEA or with an SEA;

(e) A regional consortium of SEAs; or

(f) A consortium of high-need LEAs.

Given the wide variety of entities that may apply for grants under this program, the Department expects the scope of proposed recruitment, training, and placement efforts to vary widely. For example, a nonprofit organization might propose activities in various communities throughout the nation, an SEA might propose activities to be conducted on a statewide basis, and an LEA might propose activities that would focus on its own teaching needs. It is likely that if applications from these various entities were reviewed in a single application pool, reviewers would have difficulty evaluating the relative merits of the projects. In addition, the Department is interested in supporting projects of different types that can serve as potential models of recruitment, training, and retention through alternative routes to teaching. Given these factors, and in order to evaluate fairly the relative merits of applications proposing projects of such widely varied scope, we propose to review applications in FY 2004 and later years as we did in the FY 2002 program competition—in three different applicant pools, depending on whether the LEAs to benefit from the project are located—

(a) In more than one State;

(b) Statewide or in more than one area of a State; or

(c) In a single area of a State.

When the Department announces a competition, it will provide an estimate of the number and size of awards to be made from applications in each category. However, the Department would reserve the right to adjust these estimates based on the number of high-quality applications in each pool and as a whole, without regard to the relative scores of applications in each of the three applicant pools.

Finally, because of the variety of entities that could apply for grants under this competition, it is possible that an LEA might be the recipient of services under both (1) its own

application and (2) the application of the SEA of the State in which the LEA is located, an educational service agency that is a high-need LEA, or a nonprofit organization. In this event, should those applications propose duplicative activities the Department would offer the LEA a choice of receiving its own grant award or participating in the other entity's project. Should the LEA choose to receive its own award, the Department would adjust the other entity's grant award accordingly.

4. *Participant eligibility.* Section 2312(1) provides that an individual is eligible to participate in the Transition to Teaching program if the individual (a) has substantial, demonstrable career experience, including as a highly qualified paraprofessional, or (b) is a graduate of an IHE who—

(a) Has graduated not more than three years before applying to join a Transition to Teaching project in order to become a teacher; and

(b) In the case of an individual wishing to teach in a secondary school, has completed an academic major (or courses totaling an equivalent number of credit hours) in the core academic subject that the individual will teach.

The purpose of the Transition to Teaching program is to provide financial support to enable grantees to recruit individuals from their non-teaching positions and, through alternative routes to State certification, help high-need LEAs to hire and retain them as teachers of high-need subjects. Indeed, section 2313(d)(2)(E) requires each application to describe how the proposed project will increase the number of highly qualified teachers teaching high-need academic subjects (in high-need schools operated by high-need LEAs). Consistent with this provision and the program's overall purpose, we propose that individuals who already have State teacher certification or licenses, or who are teaching on a provisional, temporary, or emergency license prior to recruitment into the program, not be eligible to participate in Transition to Teaching projects.

The Department did not adopt this requirement for the FY 2002 competition because, when we announced that competition, we did not believe that this clarification was necessary. However, a number of existing grantees have recruited some project participants from this group of teachers—typically individuals not yet certified or certified teachers desiring to change their area of certification or endorsement. While the statute does not literally prohibit this practice, for reasons we offer in the preceding paragraph, we are proposing to clarify that those awarded Transition to Teaching grants in FY 2004 or future competitions may not recruit these individuals into the program.

5. *Evaluation and accountability.* Section 2314 of the ESEA requires grantees to submit to the Department and to the Congress interim and final reports at the end of the third and fifth years of the grant period, respectively. Subparagraph (b) of this section provides that these reports must contain the results of the grantee's interim and final evaluations, which must describe the extent to which high-need LEAs that received funds through the grant have met their goals relating to teacher recruitment and retention as described in the project application.

However, while each funded project must promote the recruitment and retention of new teachers in specific identified LEAs, eligible grant recipients are not limited to LEAs. Therefore, it is possible that one or more funded projects will not provide funding to participating LEAs. In order that all project evaluations provide relevant information on the extent to which the project is meeting these LEA goals, we propose that the interim and final evaluations would need to describe the extent to which LEAs that either receive program funds or otherwise participate in funded projects have met their teacher recruitment and retention goals.

6. *Limitation on indirect costs.* The success of the Transition to Teaching Program depends upon how well grantees and the high-need LEAs with which they work recruit, hire, train, and retain highly qualified individuals from other professions and backgrounds to become teachers in high-need subjects. If the program is to achieve its purpose, we need to ensure that all appropriated funds are used as effectively as possible. To do so, we believe it is necessary to place a reasonable limitation on the amount of program funds that grant recipients may use to reimburse themselves for the indirect costs of program activities. Therefore, we propose to place a reasonable limit on the indirect cost rate that all grantees and other recipients of program funds would be able to use in determining the amount of indirect costs they may charge to their Transition to Teaching awards. As was the case for grants awarded under the FY 2002 competition, this limit would be the lesser of eight percent or the recipient's negotiated restricted indirect cost rate.

For reasons we have offered in a limited number of other competitive grant programs that focus on improving teacher quality, we believe that a similar limitation on a recipient's indirect costs is necessary here to ensure that Transition to Teaching program funds are used to secure the new teachers that Congress intended. *See, e.g.*, the discussion of (1) 34 CFR 611.61, as proposed, that governs the Teacher Quality Enhancement Grants program authorized by Title II, part A of the HEA (65 FR 6936, 6940 (February 11, 2000)), and (2) requirements for the FY 2002 grants competition under the School Leadership program authorized by Title II, part A, subpart 5 of the ESEA (67 FR 36159, 36162 (May 23, 2002)), and under this Transition to Teaching program (67 FR 41223–24 (June 17, 2002)).

Executive Order 12866

This notice of proposed priorities and requirements 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 and requirements 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 and requirements, we have determined that the benefits of the proposed priorities and requirements 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:

Elsewhere in this notice we discuss the potential costs and benefits of these proposed priorities and requirements under the **SUPPLEMENTARY INFORMATION** section.

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.

Electronic Access to This Document

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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.

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(Catalog of Federal Domestic Assistance Number 84.350 Transition to Teaching)

Program Authority: 20 U.S.C. 4683 *et seq.*

Dated: February 13, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–3739 Filed 2–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year 2003 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 2003. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2005 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 2004. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 7, 2004.

ADDRESSES AND SUBMISSION INFORMATION: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web using the interactive survey form at *http://www.census.gov/govs/www/npefs.html.* If the Web form is used, it includes a digital confirmation page where a pin number may be entered. A successful entry of the pin number serves as a signature by the authorizing official. A certification form may also be printed from the Web site, and signed by the authorizing official and mailed to the Governments Division of the Bureau of the Census, at the address listed in the previous paragraph. This signed form must be mailed within five business days of web form data submission.

Alternatively, SEAs may hand deliver submissions by 4 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, room 508, Upper Marlboro, MD 20772.

If an SEA's submission is received by the Bureau of the Census after September 7, 2004, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon J. Meade, Chief, Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800. Telephone: (301) 763–7316. 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: Frank Johnson, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002 (P.L. 107–279), 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965, as amended (ESEA) (currently 20 U.S.C. 7801(2)).

In addition to utilizing the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the ESEA, Impact Aid, and Indian Education. Other programs such as the Educational Technology State Grants program (Title II, Part D), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, the Teacher Quality State Grants (Title II, Part A) Program, and the Safe and Drug-Free Schools and Communities (Title IV, Part A) Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In January 2004, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 2004, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 7, 2004.

Having accurate and consistent information on time is critical to an efficient and fair allocation process and to the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES

establishes, for allocation purposes, September 7, 2004, as the final date by which the NPEFS web form or ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 7, 2004, the data may also be too late to be included in the final NCES published dataset.

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Authority: 20 U.S.C. 9543.

Dated: February 13, 2004.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 04–3740 Filed 2–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue funding opportunity announcement no. DE–PS26–04NT42092 entitled "Solid State Lighting Core Technologies". The Department of Energy (DOE), National Energy Technology Laboratory (NETL), on behalf of the Office of Energy Efficiency and Renewable Energy (EERE), announces that it intends to conduct a competitive funding opportunity announcement. DOE has set aggressive goals for solid state lighting (SSL) research and development: by 2015, to develop advanced solid state lighting technologies that, compared to conventional lighting technologies, are much more energy efficient, longer lasting, and cost-competitive. The SSL operational plan features two avenues: core technology research and product development. The core technology program will focus on breakthrough technologies that are typically longer-term in nature. These technology breakthrough projects will enable the product development organizations to continue their development process in parallel in order to advance the SSL technology and meet the goals of the program. Subject to approval of an exceptional circumstance determination pursuant to the Bayh-Dole Act, (covering inventions of small business, non-profit and educational institutions) core technology project recipients will be required to enter into good faith negotiations intended to lead to the licensing of inventions conceived or first actually reduced to practice under the project to product development organizations on a non-exclusive, royalty bearing basis for a defined field of use. In addition, DOE plans to competitively solicit a SSL Partnership composed of manufacturers and allies that broadly represent the industry. The partnership will, among other things, provide input and prioritization of the core technology needs.

The intent of this announcement is to solicit and receive applications for the core technology research area. This research will support multiple enabling or fundamental solid state lighting technology areas for general illumination applications. Applications should support the established mission of the 2003 Solid State Lighting Workshop (*http://www.netl.doe.gov/ssl/*) held in Washington, DC in November 2003. Applications will be subjected to a comprehensive technical review and awards will be made to a select number of applicants based upon the evaluation criteria, relevant program policy factors, and the availability of funds.

DATES: The funding opportunity announcement will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about February 27, 2004. Applicants can obtain access to the funding opportunity announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.* Questions and comments regarding the content of the announcement should be submitted through the "Submit Question" feature of IIPS at *http://e-center.doe.gov.* Locate the announcement on IIPS and then click on the "Submit Question" button. You will receive an electronic notification that your question has been answered. Responses to questions may be viewed through the "View Questions" feature. If no questions have been answered, a statement to that effect will appear. You should periodically check "View Questions" for new questions and answers.

FOR FURTHER INFORMATION CONTACT: Sue Miltenberger, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880. E-mail address: *Susan.Miltenberger@netl.doe.gov;* telephone number: (304) 285–4083.

SUPPLEMENTARY INFORMATION: It is anticipated that $6.0 million of Federal funding will be available for awards under this program. The anticipated funding would be available over multiple Federal fiscal years. Three to six awards are expected to be made in the fourth quarter of Fiscal Year 2004. Consistent with the recommendations and conclusions of the November 2003, Solid State Lighting Workshop, applications will be considered in the following areas: *Topic Area 1—Inorganic;* Subtopic (1a) High efficiency visible and near UV (>380nm) semiconductor materials for LED based on general illumination technology; Subtopic (1b) Advanced architecture and high power conversion efficiency emitters; Subtopic (1c) High temperature, efficient, long-life phosphors, luminescent materials for wavelength conversion and encapsulants; *Topic Area 2—Organic;* Subtopic (2a) High efficiency, low voltage, stable materials for OLED-based general illumination technology (hosts, dopants, and transport layers); Subtopic (2b) Strategies for improved light extraction and manipulation; and Subtopic (2c) Novel device structures for improved performance and low cost. Only research that is consistent with these needs and represents fundamental advancements in the price and performance relationship for solid state lighting for general illumination applications will be considered for award.

Once released, the funding opportunity announcement will be available for downloading from the IIPS

Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the funding opportunity announcement will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement. The actual funding opportunity announcement document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV, on February 10, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–3741 Filed 2–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Issue a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy.

ACTION: Notice of intent to issue funding opportunity announcement No. DE–PS26–04NT42089, entitled "Million Solar Roofs Initiative Small Grant Program for State And Local Partnerships."

SUMMARY: The Department of Energy (DOE), pursuant to the DOE financial assistance rules, 10 CFR 600.8, is announcing its intention to solicit applications from State and local partnerships under the Million Solar Roofs (MSR) Program. DOE's Office of Energy Efficiency and Renewable Energy will consider proposals from interested State and local partnerships to help fund their MSR program development and implementation activities.

DATES: The announcement will be issued mid-February 2004.

ADDRESSES: A copy of the announcement will be accessible through the Department of Energy, Industry Interactive Procurement System (IIPS) Web site at: *http://e-center.doe.gov/* by browsing opportunities by Program Office for those funding opportunity announcements issued by the National Energy Technology Laboratory. DOE will not issue hard copies of the announcement.

FOR FURTHER INFORMATION CONTACT: James McDermott, Contracting Officer, at 215–656–6976 or electronically at *james.mcdermott@ee.doe.gov*. Responses to questions will be posted on the DOE IIPS Web site.

SUPPLEMENTARY INFORMATION: The Department of Energy's MSR Initiative is an initiative to support State and local partnerships who agree to install solar energy systems on one million buildings in the United States (U.S.) by 2010. This effort includes two types of solar energy technology: (1) Solar electric (photovoltaic) systems that produce electricity from sunlight, and (2) solar thermal systems panels that produce heat for domestic hot water, for space heating or for heating swimming pools. The partnerships bring together business, government and community organizations at the regional level with a commitment to install a pre-determined number (at least 500) of solar energy systems.

A complete description of partnerships and their representative activities can be found on the MSR Web site at *http://www.MillionSolarRoofs.org*.

Applications under the announcement must further the work of State and local partnerships, including partners in the building industry, State and local governments, utilities, the solar energy industry, financial institutions and non-governmental organizations, to remove market barriers to solar energy use and to develop and strengthen local demand for solar energy products and applications.

There are two types of grants available: Phase 1—New Partnership grants, and Phase 2—Meeting the Commitment grants. Only one application may be submitted per partnership in one or the other of the categories, but not both. Partnerships that have been awarded prior MSR partnership grants in the past may not apply for a Phase 1—New Partnership grant. Newly formed or existing partnerships that have not received prior MSR grants may apply for a Phase 1—New Partnership grant. Any partnership with the prerequisites may apply for a Phase 2—Meeting the Commitment grant.

The project or activity must be conducted in a designated MSR State and local partnership area. There is no cost sharing requirement for these grants, although cost sharing will be one of the criteria considered. Subject to the availability of funds, multiple awards for a total of $1,500,000 (DOE funding) in Fiscal Year 2004 are anticipated as a result of this funding opportunity. The selected applicants will receive financial assistance under a grant. DOE will fund up to $50,000 per project. DOE anticipates funding approximately 30 to 40 grants in the amount of $10,000 to $50,000 each.

Funding opportunity announcement number DE–PS26–04NT42089 will include complete information on the program, including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the announcement is planned for mid-February 2004, with applications due 45 days after the announcement has been issued.

Issued in Pittsburgh, Pennsylvania, on February 5, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–3742 Filed 2–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–200–001]

Enbridge Pipelines (Midla) L.L.C.; Notice of Compliance Filing

February 13, 2004.

Take notice that on February 10, 2004, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be made effective January 29, 2004:

Second Revised Sheet No. 130
Substitute First Revised Sheet No. 139
First Revised Sheet No. 167

Midla states that the purpose of the filing is to comply with the Commission's Order dated January 29, 2004, in Docket No. RP03–200–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–335 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–329–006]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

February 13, 2004.

Take notice that on February 10, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective July 1, 2003:

Third Revised Sheet No. 39B
Eleventh Revised Sheet No. 41
Eighth Revised Sheet No. 42

Great Lakes states that these tariff sheets are being filed to comply with the Commission's February 3, 2004, Letter Order (February 3 Letter Order) accepting Great Lakes' November 24, 2003, Order No. 637 Compliance Filing (Docket No. RP00–329–000, *et al.*). Great Lakes also states that in the February 3 Letter Order, the Commission noted that certain tariff sheets previously accepted in the Great Lakes Order No. 587–R proceeding (Docket No. RP03–368–000, *et al.*) require revisions to incorporate approved language from the Order No. 637 proceeding. Great Lakes further states it was directed to file such revised tariff sheets within 15 days of the February 3 Letter Order and the tariff sheets included in this compliance tariff filing reflect those required revisions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–338 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–563–029, et al.]

Devon Power LLC, et al.; Electric Rate and Corporate Filings

February 10, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and NRG Power Marketing Inc.

[Docket No. ER03–563–029]

Take notice that on February 6, 2004, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively Applicants) tendered for filing Updated Schedules 1 and 2 to the Cost-of-Service Agreements entered into between Applicants and ISO New England Inc. (ISO–NE).

Applicants state that they have provided copies of this filing to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: February 27, 2004.

2. Aquila, Inc.

[Docket No. ER03–1079–002]

Take notice that on February 6, 2004, Aquila, Inc. filed a three-year updated market analysis.

Comment Date: February 27, 2004.

3. Southern California Edison Company

[Docket No. ER04–285–001]

Take notice that on February 6, 2004, Southern California Edison Company (SCE) tendered for filing revised rate sheets (revised Sheets) to the Interconnection Facilities Agreement between the City of Industry, California (Industry) and SCE, Service Agreement No. 49 under SCE's Wholesale Distribution Access Tariff, FERC Electric Tariff First Revised Volume No. 5, to reflect the proper tariff volume and proper service agreement designations as directed in the February 3, 2004, Letter Order in Docket No. ER04–285–000.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: February 27, 2004.

4. Southeast Chicago Energy Project, LLC

[Docket No. ER04–333–001]

Take notice that on February 6, 2004, Southeast Chicago Energy Project, LLC (Southeast Chicago) tendered for filing an amendment to its pending filing in the captioned docket to amend Schedules A and D to its Monthly Cost of Service Billing Formula in its Rate Schedule No. 1.

Comment Date: February 17, 2004.

5. Southern California Edison Company

[Docket No. ER04–384–001]

Take notice, that on February 6, 2004, Southern California Edison Company (SCE) tendered for filing a revised rate sheet (Revised Sheet) for the Service Agreement for Wholesale Distribution Service between SCE and the City of Moreno Valley, California (Moreno Valley) for the Cactus Avenue Wholesale Distribution Load filed in Docket No. ER04–384–000 on January 9, 2004. SCE states that the Revised Sheet reflects a revised date for the commencement of wholesale Distribution Service.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Moreno Valley.

Comment Date: February 27, 2004.

6. Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC

[Docket No. ER04–530–000]

Take notice that on February 5, 2004, Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade LLC (PSEG ER&T), filed with the Federal Energy Regulatory Commission a request for waiver of the Commission's rules and their market-based rate tariffs and codes of affiliate conduct to the extent necessary to permit PSEG ER&T to participate in the auction for Basic Generation Service (BGS), as approved by the New Jersey Board of Public Utilities, and provide BGS within the service territory of its affiliate PSE&G.

Comment Date: February 26, 2004.

7. Virginia Electric and Power Company

[Docket No. ER04–531–000]

Take notice that on February 6, 2004, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing Unexecuted Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between Virginia Electric and Power Company and Ingenco Wholesale Power LLC, designated as Service Agreement Nos. 379 and 380 under the Company's FERC Electric Tariff, Second Revised Volume No. 5. Dominion Virginia Power requests an effective date of January 7, 2004.

Dominion Virginia Power states that copies of the filing were served upon Ingenco Wholesale Power LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 27, 2004.

8. AmerGen Vermont, LLC

[Docket No. ER04–532–000]

Take notice that on February 6, 2004, AmerGen Energy Company, LLC, on behalf of AmerGen Vermont, LLC, (AmerGen Vermont), tendered for filing a Notice of Cancellation, of FERC Electric Tariff Original Volume No. 1, effective March 31, 2003, the date on which AmerGen Vermont was dissolved as a limited liability company organized under the laws of the State of Vermont.

Comment Date: February 27, 2004.

9. PJM Interconnection, L.L.C.

[Docket No. ER04–539–000]

Take notice that on February 5, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to implement market mitigation procedures for the Northern Illinois Control Area upon the integration of Commonwealth Edison Company, including Commonwealth Edison Company of Indiana (collectively ComEd) into the PJM footprint.

PJM requests an effective date of May 1, 2004, for the amendments, which coincides with the full integration of ComEd into PJM. PJM states that copies of this filing have been served on all PJM members, ComEd, and each State electric utility regulatory commission in the PJM region.

Comment Date: February 26, 2004.

10. Ormesa LLC

[Docket No. QF86–681–005]

Take notice that on February 3, 2004, Ormesa LLC tendered for filing an application for recertification of its geothermal small power production facility located at East Mesa KGRA, in Imperial County, California pursuant to 18 CFR 292.207(b) of the Commission's regulations.

Comment Date: March 4, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–334 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–520–001, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Filings

February 12, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power & Light Company.

[Docket No. ER04–520–001]

Take notice that on February 4, 2004, Florida Power & Light Company (FPA), tendered for filing an amendment to its February 2, 2004 filing in Docket No. ER04–520–000. *Comment Date:* February 25, 2004.

2. Citizens Communications Company

[Docket No. ER04–523–001]

Take notice that on February 10, 2004, Citizens Communications Company (Citizens) amended its February 2, 2004 filing in Docket No. ER04–523–000 by filing a Notice of Termination of Franklin Electric Light Company, Inc. Rate Schedule FERC No. 2.

Comment Date: March 2, 2004.

3. CMS Energy Power Management Company

[Docket No. ER04–543–000]

Take notice that on February 10, 2004, CMS Energy Resource Management Company (ERM) tendered for filing its name change from CMS Marketing, Services and Trading Company to Energy Resource Management Company. ERM states that the corporate identity is retained and only the name of the corporation has been changed.

Comment Date: March 1, 2004.

4. Avista Corporation

[Docket No. ER04–544–000]

Take notice that on February 10, 2004, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR Part 35, a proposed tariff for the sale, assignment or transfer of transmission rights, Avista Corporation, FERC Electric Tariff Original Volume No. 11 (Tariff). Avista respectfully

requests that the Commission accept the Tariff for filing and grant all waivers necessary to allow the Tariff to become effective February 15, 2004.

Comment Date: March 2, 2004.

5. Redwood Energy Marketing, LLC

[Docket No. ER04–545–000]

Take notice that on February 10, 2004, Redwood Energy Marketing, LLC (Redwood) tendered for filing a petition for acceptance of Redwood Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Redwood states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Redwood also states that it is not in the business of generating or transmitting electric power and that it is an unaffiliated company.

Comment Date: March 2, 2004.

6. Onondaga Cogeneration Limited Partnership

[Docket No. ER04–546–000]

Take notice that on January 9, 2004, Onondaga Cogeneration Limited Partnership (Onondaga) tendered for filing a revised code of conduct to reflect Onondaga's current affiliation with Aquila, Inc. and Onondaga's pending affiliation with Teton Power Funding, LLC, a subsidiary of ArcLight Energy Partners Fund I, L.P.

Comment Date: February 23, 2004.

7. Aquila, Inc.

[Docket No. ES03–43–003 and ES03–43–004]

Take notice that on February 3, 2004, in Docket No. ES03–43–003, Aquila Inc. (Aquila), tendered for filing in response to a second data request issued on November 18, 2003, by the Director of the Division of Tariffs and Market Development—Central, in the above-referenced docket; and on February 3, 2004, in Docket No. ES03–43–004, Aquila amended its July 25, 2003 application to restate the dates for the conversion of long-term debt outstanding to shares of Common Stock of Aquila. *Comment Date:* March 1, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–340 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6514–009]

City of Marshall Hydro Project; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 13, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent minor license.

b. *Project No.:* 6514–009.

c. *Date Filed:* May 2, 2003.

d. *Applicant:* City of Marshall, Michigan.

e. *Name of Project:* City of Marshall Hydroelectric Project.

f. *Location:* On the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Keith Zienert, Power Plant Superintendent, City of Marshall, 906 S. Marshall, Marshall, MI 49068, (269) 781–8631; or John Fisher, Chairman, Lawson-Fisher Associates P.C., 525 West Washington Avenue, South Bend, IN 46601, (574) 234–3167.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov.*

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing City of Marshall Hydroelectric Project (Project) consists of: (1) The 12-foot-high, 215-foot-long Perrin No. 1 Dam; (2) the 12-foot-high, 90-foot-long Perrin No. 2 Dam; (3) a 130-acre reservoir with a normal pool elevation of 899 feet msl; (4) a 140-foot-long canal-type forebay; (5) a powerhouse containing three generating units with a total installed capacity of 463 kW; and (6) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and

procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document: April 2004.

Notice that application is ready for environmental analysis: July 2004.

Notice of the availability of the EA: November 2004.

Ready for Commission decision on the application: February 2005.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA: February 2005.

Ready for Commission's decision on the application: February 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E4–336 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–017 and ER02–1656–018]

California Independent System Operator Corporation; Notice Establishing Due Dates for Filing Comments Arising From January 28–29, 2004, Staff Technical Conference and Announcing Location for March 3–5, 2004, Staff Technical Conference

February 12, 2004.

On January 28–29, 2004, the Federal Energy Regulatory Commission Staff held a technical conference to discuss with state representatives and market participants in California various substantive issues related to the California Independent System Operator Corporation's (CAISO) Revised MD02 proposal, including the flexible offer obligation proposal, the residual unit commitment process, pricing for constrained-output generators, marginal losses, and ancillary services.

Interested participants should submit comments arising from the discussions at the January 28–29 technical conference no later than February 17, 2004, as previously announced at the technical conference. The CAISO is also expected to respond substantively to these comments by February 24, 2004. The participants' comments and the CAISO's response will form the basis for further discussion of issues pertaining to the flexible offer obligation proposal, the residual unit commitment process, and constrained-output generators, among other things, at the Staff technical conference on March 3–5, 2004, as announced in the Notice of Technical Conference issued on February 6, 2004. The final agenda of the conference will be announced in a subsequent notice.

The March 3–5, 2004 technical conference will begin at 9 a.m. Pacific time on each day, and will adjourn at 5 p.m. Pacific time on March 5, 2004. The conference will be held at San Francisco Downtown Courtyard (Marriott), 299 Second Street, San Francisco, California.

The conference is open for the public to attend, and registration is not required. For more information about the conference, please contact: Olga Kolotushkina at (202) 502–6024 or at *olga.kolotushkina@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–339 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

February 13, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the

docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited:		
1. ER04–316–000	2–10–04	Bob Mussetter.
2. Project No. 2342–000	2–10–04	Shern Lampman.
3. Project No. 2342–000	2–13–04	Dinda Evans.
Exempt:		
1. ER04–316–000	2–02–04	Hon. Keith Richman. Hon. Joe Canciamilla.
2. PF04–1–000	2–11–04	Jennifer Kerrigan.
3. CP01–49–002 CP01–49–003	2–12–04	Hon. Rick Larsen.
4. Project No. 2114–000	2–13–04	Leon Hoepner.

Magalie R. Salas,

Secretary.

[FR Doc. E4–337 Filed 2–19–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7625–5]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that the EPA has made under the New Source Performance Standards (NSPS) (40 CFR part 60), the National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR parts 61 and 63), and the Stratospheric Ozone Protection Program (40 CFR part 82).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *www.epa.gov/compliance/assistance/applicability*. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov*. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. *See* 40 CFR 60.5 and 61.06. Although the part 63 NESHAP or Maximum Achievable Control Technology (MACT), and section 111(d) of the Clean Air Act (CAA) regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. *See* 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with more than one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 124 such documents added to the ADI on October 31, 2003. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *www.epa.gov/compliance/assistance/applicability*.

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on October 31, 2003; the applicable category; the subpart(s) of 40 CFR parts 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI Determinations Uploaded on October 31, 2003

Control No.	Category	Subpart	Title
M030020	MACT	LL	Compliance Extension Approval for Potlines 1–8
M030021	MACT	LL	Primary Aluminum MACT Compliance Extension
M030022	MACT	Y	Leak Detection and Repair (LDAR), Operation and Maintenance (O&M), and Percent Reduction Requirements
M030023	MACT	LL	Compliance Extension
M030024	MACT	R	Ability to Qualify as Unaffected Facility
M030025	MACT	LL	Compliance Extension for Paste Production Plant
M030026	MACT	LL	High Efficiency Air Filtration (HEAF) Scrubber System Parametric Monitoring Plan
M030027	MACT	LL	HEAF Scrubber System Parametric Monitoring Plan
M030028	MACT	LL	Compliance Extension for Paste Production Plant
M030029	MACT	LL	Compliance Extension Approval for Potlines 1, 2, and 4
M030030	MACT	LL	Primary Aluminum Maximum Achievable Control Technology Test Plan/Alternative Monitoring
M030031	MACT	LL	Primary Aluminum Maximum Achievable Control Technology Test Plan/Alternative Monitoring
M030032	MACT	LL	Test Plan—Flow Angle Measurement Testing
M030033	MACT	RRR	Site-Specific Test Plan/Operation, Maintenance and Monitoring Plan
M030034	MACT	N	Performance Testing and Parametric Monitoring
M030035	MACT	S	Request for MACT I Compliance Extension
M030036	MACT	Y, CC	Gasoline Throughput, Hazardous Air Pollutant (HAP) Emissions Applicability
M030037	MACT	LL	Primary Aluminum MACT Test Plan/Alternative Monitoring
M030038	MACT	LL	Primary Aluminum MACT Test Plan
M030039	MACT	S	Compliance Extension for Pulp and Paper MACT
M030040	MACT	S	Evaporator Condensate Streams
M030041	MACT	S	Compliance Extension
M030042	MACT	S	Denial of Compliance Extension Request
M030043	MACT	S	Request for MACT I Compliance Extension
M030044	MACT	LL	Compliance Extension for Paste Production Plant
M030045	MACT	LL	Compliance Extension for Paste Production Plant
M030051	MACT	MM	Alternative Monitoring Parameter for Smelt Dissolving Tank Scrubber
M030046	MACT	N	Performance Test and Monitoring Plan
M030047	MACT	N	Request for Source Test Waiver
M030048	MACT	N	Requirement to Conduct Performance Test
M030049	MACT	LL	Compliance Extension and Alternative Control Device
M030050	MACT	LL	Alternative Control Device and Parametric Monitoring Plan
M030052	MACT	DDD	Alternative Standard for HAP Metal Emissions
M030053	MACT	MM	Alternative Monitoring Parameter for Recovery Furnace
M030054	MACT	UUU	Alternative Parameter Monitoring for MACT II Continuous Opacity Monitoring Requirements
M030055	MACT	MM	Smelt Dissolving Tank Scrubbers
M030056	MACT	DDD	Alternative Standard for HAP Metal Emissions
M030057	MACT	MM	Alternative Monitoring for Recovery Furnace Particulate Matter (PM)
M030058	MACT	CC, R	Bulk Loading of Isomerate at a Refinery
M030059	MACT	OOO	Potential to Emit Restrictions
M030060	MACT	RRR	Melting and Alloying Aluminum Scrap in a Furnace Operation
M030061	MACT	EEE	Alternative Monitoring for Hazardous Waste Incinerator
M030062	MACT	EEE	Alternative Monitoring for Hazardous Waste Incinerator
Z030002	NESHAP	E, A	Performance Test Waiver for Two Incinerators
Z030003	NESHAP	E	Subpart E Applicability to Electric Toilets
Z030004	NESHAP	FF	Wastewater Treatment Operations
0300048	NSPS	GG	Custom Fuel Monitoring Schedule
0300040	NSPS	Db	Boiler Derate through Burner Replacement
0300049	NSPS	Dc	Applicability to Boilers Under 10 MMBtu
0300050	NSPS	J, A	Performance Test Waiver for Heaters
0300051	NSPS	GG	Custom Fuel Monitoring Schedule
0300052	NSPS	KKK	Compressor Seal System Compliance
0300053	NSPS	GG, A	Initial Performance Test Waiver for Identical Turbines
0300054	NSPS	D	Alternative Opacity Monitoring Plan
0300047	NSPS	D	Alternative Opacity Monitoring
0300055	NSPS	I	Determining Dry Molecular Weight from Dryer Flue Gas
0300056	NSPS	GG, A	Waiver of Performance Test Request
0300057	NSPS	DD	Permanent Storage Capacity and Fugitive Emission Issues
0300058	NSPS	Db	Predictive Emissions Monitoring System (PEMS)—Alternative Emissions Monitoring Approval Amendment
0300059	NSPS	GG	Custom Fuel Monitoring Schedule
0300060	NSPS	Dc	Custom Monitoring and Reporting Schedule
0300061	NSPS	Cc	Test Plan—Nonmethane Organic Compounds Emission Rate
0300062	NSPS	WWW	Sending Landfill Gas to Separate Entity for Combustion
0300063	NSPS	Dc	Alternative Recordkeeping Schedule
0300064	NSPS	GG	Custom Fuel Monitoring Schedule

ADI DETERMINATIONS UPLOADED ON OCTOBER 31, 2003—Continued

Control No.	Category	Subpart	Title
0300065	NSPS	O	Subpart O Applicability to Electric Toilets
0300066	NSPS	Dc	Boiler Changes as NSPS Modification or Reconstruction
0300067	NSPS	GG, A	Custom Fuel Monitoring Schedule/Alternative Test Method
0300068	NSPS	Db, A	Alternative Opacity Monitoring
0300069	NSPS	GG	Custom Fuel Monitoring Schedule
0300070	NSPS	GG	Custom Fuel Monitoring Schedule
0300071	NSPS	GG	Extension of Alternative Fuel Monitoring Schedule and Test Method
0300072	NSPS	D, Db, A	Alternative Monitoring Plan (AMP)
0300073	NSPS	D, A	Alternative Opacity Monitoring
0300074	NSPS	J, A	Alternative Sulfur Monitoring Plan
0300075	NSPS	GG, A	Performance Test Waiver
0300076	NSPS	Db	Boiler Derate
0300077	NSPS	GG	Custom Fuel Monitoring Schedule
0300078	NSPS	Dc, J, A	Alternative Monitoring Plan (AMP)
0300079	NSPS	J, A	Performance Test Requirement
0300080	NSPS	Db	Nitrogen Oxides (NO_X) Predictive Emissions Monitoring System
0300082	NSPS	GG	Custom Fuel Monitoring Schedule
0300083	NSPS	GG, A	Alternative Monitoring and Test Method
0300084	NSPS	J, A	Alternative Opacity Monitoring Plan
0300085	NSPS	I	Deviation from Performance Testing Requirements
0300086	NSPS	GG, A	Initial Performance Test
0300087	NSPS	GG	Alternative Monitoring Method
0300088	NSPS	GG, A	Initial Performance Test
0300089	NSPS	Dc	Alternative Recordkeeping Plan
0300090	NSPS	Dc	Alternative Recordkeeping Plan
0300091	NSPS	GG, A	Alternative Test Method and Monitoring Plan
0300092	NSPS	GG	Alternative Test Method and Monitoring Plan
0300093	NSPS	GG	Alternative Performance Test Procedure
0300094	NSPS	GG, A	Alternative Testing/Monitoring & Custom Fuel Monitoring Schedule
0300095	NSPS	Db, A	Alternative Opacity Monitoring
0300096	NSPS	GG	Custom Fuel Monitoring
0300097	NSPS	Db, Dc	Applicability of Subparts Db and Dc to Two Burners
0300098	NSPS	I	Deviation from Performance Testing Requirements
0300101	NSPS	GG, A	Performance Test for Combustion Turbine
0300102	NSPS	Dc	Alternative Fuel Monitoring Plan Request for Boilers
0300103	NSPS	Dc	Alternative Fuel Monitoring Plan Request for Boilers
0300104	NSPS	D	Determining Maximum Heat Input Rating for Boiler
0300105	NSPS	GG	Gas Turbine Definition and Modification Issues
0300106	NSPS	Dc	Alternative Fuel Monitoring Plan Request for Boiler
0300107	NSPS	Dc	Request to Reduce Fuel Monitoring Frequency
0300108	NSPS	Dc	Alternative Fuel Monitoring Plan Request for Boilers
0300109	NSPS	Db	Use of Fuel Vendor Receipts as Sulfur Monitoring
0300111	NSPS	J	Alternative Hydrogen Sulfide (H_2S) Monitoring Plan
0300112	NSPS	GG	Nitrogen Monitoring Waiver for Stationary Gas Turbines
0300113	NSPS	Dc	Alternative Fuel Monitoring Plan for Boilers
0300114	NSPS	Dc	Alternative Fuel Monitoring Plan for Boilers
0300117	NSPS	GG	Gas Turbine QC Testing Operations
0300115	NSPS	GG	Alternative Monitoring and Testing for Combustion Turbines
0300116	NSPS	Dc	Applicability of Subpart Dc to Process Dryer Kilns
0300118	NSPS	Dc	Alternative Fuel Monitoring for Boilers
0300119	NSPS	GG, Da	Alternative Testing, Monitoring and Reporting for CC Turbines
0300120	NSPS	WWW	Applicability to Internal Combustion Engines
0300121	NSPS	WWW	Use of Treatment System Prior to IC Engine Combustion
0300122	NSPS	Dc	Alternative Opacity Monitoring
0300123	NSPS	Db	Coke Oven Gas
0300124	NSPS	VV	Equipment in Light Liquid Service
0300125	NSPS	Cc, B	Federal Plan Requirements for Landfill Subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA)
0300126	NSPS	Y	Applicability to Replacement of Individual Conveyors
0300127	NSPS	Y	Applicability to Replacement of Individual Conveyors

Abstracts

Abstract for [M030020]

Q: Will EPA approve a request for a compliance extension for eight center-worked prebake two (CWPB2) potlines at Kaiser's Mead Works?

A: Yes. EPA approves this request, subject to the terms and conditions in the letter. EPA finds that an additional period of time is necessary for installation of controls in order to comply with the Primary Aluminum MACT.

Abstract for [M030021]

Q: Does EPA concur with Oregon Department of Environmental Quality (ODEQ) grant of a one-year compliance extension to install compliance testing equipment in potlines 1, 2, and 4?

A: No. The real case examples demonstrate that additional time is not necessary to install the hydrogen fluorides continuous emission monitoring systems. Further, the regulations do not allow compliance extension requests for the installation of testing/monitoring equipment. Therefore, ODEQ must revise or revoke the compliance extension.

Abstract for [M030022]

Q1: Are the crude oil storage tanks at the Valdez Marine Terminal (VMT) source subject to the leak detection and repair (LDAR) requirements set forth by 40 CFR 63.563(c)?

A1: No. The storage tanks are not part of the vapor collection system and do not operate as part of a vapor balancing system as defined by the Marine Vessel Loading NESHAP. Therefore, the LDAR requirements of 40 CFR 63.563(c) do not apply to the VMT's crude oil storage tanks.

Q2: 40 CFR 63.562(e)(2) requires the development and maintenance of an operation and maintenance (O&M) plan that describes a program of corrective action for varying (*i.e.*, exceeding baseline parameters) air pollution control equipment and monitoring equipment. Should the plan also address variances that occur within the vapor collection equipment, for example if vapor recovery system shutdowns have occurred as a result of high measured oxygen levels?

A2: No. The O&M plan requirements of 40 CFR 63.562(e)(2) and (e)(3) apply only to the VMT's control device. The vapor recovery system is not required to be covered by a specific O&M plan. Potential failure of the vapor recovery system should be anticipated and accounted for in the facility's O&M procedures.

Q3: Is the operator required to show an overall reduction of 98 percent of the captured vapors, per 40 CFR 63.565(l), or is the operator only required to show that the control device can achieve 98 percent destruction efficiency?

A3: The 98 weight-percent volatile organic compounds/hazardous air pollutants reduction requirement applies only to the VMT's control devices pursuant to 40 CFR 63.562(d)(2).

Abstract for [M030023]

Q: The Longview plant has been granted an additional year to achieve compliance with the Primary Aluminum MACT at North Plant potlines A, B, and C. Can the company receive an additional compliance extension for these potlines to perform fume collection system improvements to achieve compliance with the Primary Aluminum MACT?

A: Yes. Because an additional period of time is necessary for installation of controls to comply with the standards, EPA intends to grant an additional compliance extension for all three potlines, subject to the terms and conditions in the letter, pursuant to 40 CFR 63.6(i)(10).

Abstract for [M030024]

Q: Do the exceptions in 40 CFR 63.420(a)(1) or (a)(2) apply to the Pocatello terminal, such that the terminal is not subject to the Gasoline Distribution MACT?

A: No. EPA has determined that: (a) The Pocatello terminal does not satisfy the emissions screening factor prescribed in 40 CFR 63.420(a)(1); and (b) the terminal has not proven that it is not a major source, as defined in 40 CFR 63.2. Furthermore, the terminal qualifies for neither the Potential to Emit Transition Policy nor the Gasoline Distribution MACT Limited Relief Policy. Therefore, the requirements of the Gasoline Distribution MACT apply to the terminal in Pocatello, Idaho.

Abstract for [M030025]

Q: Will EPA extend the compliance date for a paste production plant subject to MACT subpart LL?

A: No. Because the facility has successfully demonstrated compliance with the applicable polycyclic organic matter emission standard, EPA finds no reason to extend the compliance date.

Abstract for [M030026]

Q: Will EPA approve the High Efficiency Air Filtration (HEAF) Scrubber System Parametric Monitoring Plan for a paste production plant subject to Primary Aluminum MACT?

A: No. EPA does not approve the use of the proposed plan because the proposed parametric monitoring limits are not reasonable. The amended plan shall include the information satisfying the requirements of 40 CFR 63.848(k). EPA also suggests incorporating the daily visual emissions monitoring into the plan.

Abstract for [M030027]

Q: Will EPA approve the revised HEAF Scrubber System Parametric Monitoring Plan (refer to determination M030026 on this ADI update) for the paste production plant?

A: Yes. EPA approves the use of the amended plan because the revised parametric monitoring limits are reasonable and the plan identifies the accuracy requirements.

Abstract for [M030028]

Q: Will EPA extend the compliance date for a paste production plant subject to MACT subpart LL?

A: No. EPA has found that additional time is not necessary for installation of controls in order to comply with the applicable polycyclic organic matter emission standard. EPA received no additional information or arguments in support of the request within 15 calendar days of receipt of the denial notice. EPA is hereby formally denying the compliance extension request.

Abstract for [M030029]

Q: Will EPA approve a request for a compliance extension for three horizontal stud soderberg potlines at Kaiser's Tacoma Works subject to the Primary Aluminum MACT (40 CFR part 63, subpart LL)?

A: Yes. EPA grants a compliance extension for all three potlines pursuant to 40 CFR 63.6(i)(10), subject to the terms and conditions in the letter, because an additional period of time is necessary for installation of controls in order to comply with the Primary Aluminum MACT.

Abstract for [M030030]

Q: Will EPA approve a site-specific test plan under the Primary Aluminum MACT for three horizontal stud soderberg potlines at Kaiser's Tacoma Works?

A: No. The test plan shall be revised to reflect EPA's comments on the stack sampling rotation approach and resubmitted for approval. The proposed ALCOA Methods and the American Society for Testing and Materials (ASTM) methods are approved as alternative test methods to Referenced Method 13A/13B.

Abstract for [M030031]

Q: Will EPA approve a site-specific test plan under the Primary Aluminum MACT for Alcoa's Wenatchee Works facility?

A: Yes. EPA approves with conditions the test plan which specifies sampling and analytical procedures to measure emissions from four center-worked prebake (CWPB1) potlines and an anode bake furnace, and the hydrogen fluoride continuous emission monitoring system method for use at Wenatchee Works.

Abstract for [M030032]

Q: For 40 CFR part 63, subpart LL, may Wenatchee get an exemption of flow angle measurement testing at potline 3 based on testing of other potlines?

A: Yes. Given the physical and operational similarities among the three

potlines and potline reactor modules, EPA finds that the flow angle measurement results from potline 1 and 2 may be applied to potline 3.

Abstract for [M030033]

Q: Will EPA approve a site-specific test plan, and an operation, maintenance and monitoring plan (OM&MP) for the Alcoa Wenatchee Works facility subject to MACT subpart RRR?

A: Yes. Based on the information submitted, EPA approves the revised OM&MP and the revised site-specific test plan.

Abstract for [M030034]

Q: Will EPA approve the parametric monitoring plan, and the alternate test method plan proposed on January 28, 2000 by Industrial Chrome Plating (ICP)to comply with 40 CFR part 63, subpart N?

A: No. ICP's latest parametric monitoring and alternate test method proposals are not acceptable. EPA requests that within 30 days of receipt of the letter, ICP submit revised proposals for approval that incorporate the changes agreed upon during a conference call and that are consistent with the recommendations noted in the letter.

Abstract for [M030035]

Q: Will EPA grant an extension to achieve compliance with the MACT I standards at Port Townsend facility subject to Pulp and Paper MACT?

A: No. The facility's request does not relate to the installation of controls. Therefore, the request does not meet the criteria for the granting of this extension. Pursuant to 40 CFR 63.6(i)(12)(iii), EPA intends to deny the request. The facility has the opportunity to present in writing, within 15 calendar days of receipt of the letter, additional information to EPA before the request is formally denied.

Abstract for [M030036]

Q1: For sources with gasoline throughput and/or hazardous air pollutants (HAPs) emissions below specific applicability thresholds as of the initial compliance dates, does the source calculate throughput and/or actual annual HAPs emissions on a 12-month rolling average or once per calendar year basis to determine if the thresholds in 40 CFR part 63, subparts Y and CC are subsequently exceeded?

A1: Region 10 interprets the rules to require both ARCO Cherry Point Refinery (ARCO) and the Tosco Ferndale Refinery (Tosco) to calculate gasoline throughput and annual HAPs emissions only once each year on September 30 for the purpose of determining if the applicable thresholds are exceeded.

Q2: If annual gasoline throughput exceeds 10 mega barrels, and/or actual annual HAPs emissions are greater than 10 or 25 TPY, what is the prescribed schedule to achieve compliance with the applicable Reasonably Available Control Technology (RACT) and/or MACT emission standard in 40 CFR part 63, subpart Y?

A2: In the event annual gasoline throughput exceeds 10 mega barrels, and/or actual annual HAPs emissions increase beyond 10 or 25 TPY, the affected source is required to achieve compliance with the applicable RACT and/or MACT emission standard within three years of such exceedance.

Q3: Does the extraordinary nature of the Olympic Pipeline accident warrant providing regulatory relief to the petroleum refineries?

A3: No. Region 10 is not aware of any provision within section 112 of the CAA to grant regulatory relief to either petroleum refinery due to the Olympic Pipeline accident.

Abstract for [M030037]

Q: Will EPA approve a site-specific test plan for a facility subject to the Primary Aluminum MACT?

A: Yes. EPA approves with conditions a test plan which specifies sampling and analytical procedures to measure emissions from five center-worked prebake two (CWPB2) potlines and an anode bake furnace, and the hydrogen flouride continuous emission monitoring system (CEMS) monitoring method.

Abstract for [M030038]

Q: Will EPA approve a site-specific test plan under 40 CFR part 63, subpart LL to measure emissions from three side-worked prebaked (SWPB) potlines and an anode baking furnace?

A: Yes. EPA has determined that the test plan specifying sampling and analytical procedures to measure emissions from the three SWPB potlines and the anode baking furnace is acceptable.

Abstract for [M030039]

Q: For 40 CFR part 63, subpart S, will EPA approve an extension to comply with the pulp process condensate requirements which the Oregon Department of Environmental Quality (ODEQ) has already approved? The extension applies both for adding a steam stripper to control condensates or in the alternative to allow the facility to resolve issues if it decides to use a "hard-piping option" to comply.

A: In the event EPA amends the Pulp & Paper MACT to withdraw certain control requirements for biological treatment systems [40 CFR 63.453(j)(2)(ii)(B)] such that the facility elects then not to install a steam stripper, a one-year compliance extension may not be warranted. To accommodate such an event, EPA recommends that the state agency modify the approved compliance extension so that it expires within 30 days of the effective date of the rule amendment. As for Pope & Talbot, Incorporated's (P&T's) request for an extension to comply with the hard-piping option, EPA finds no reason to grant such an extension.

Abstract for [M030040]

Q: Which condensates at Longview are regulated evaporator system condensates under the Pulp and Paper MACT?

A: Pursuant to 40 CFR 63.446(b)(3), the following condensates are regulated evaporator system condensates: (a) Condensates from vapors from the feed effect(s); (b) condensates from effects that have a higher vacuum than the feed effect(s); and (c) condensates from the surface condenser and vacuum system(s). These condensates contain a majority of hazardous air pollutants within the evaporator system.

Abstract for [M030041]

Q1: Will EPA grant a one-year extension to comply with the Pulp and Paper MACT for the Longview Fibre facility?

A1: Yes. With certain conditions, EPA grants the extension to comply with 40 CFR 63.443 in order to install a low volume, high concentration system.

Q2: Will EPA grant a one-year extension to conduct performance testing on the facility's dedicated control device?

A2: No. EPA intends to deny the request because it is not related to the installation of pollution controls, which is a required condition for an extension under 40 CFR 63.6(i)(4)(i)(A). However, Longview Fibre has 15 calendar days upon receipt of the letter to provide additional information to EPA before the request is formally denied.

Abstract for [M030042]

Q: Will EPA grant a one-year extension to conduct performance testing on the dedicated control device at Longview Fibre's facility?

A: No. Based on the reason outlined in the August 31, 2000 letter, and based on the fact that EPA received no

additional information relating to this request, EPA denies the request.

Abstract for [M030043]

Q: May Weyerhaeuser receive a one-year extension to comply with the condensate collection standards, and with the bleaching system standards at its Longview (WA) facility?

A: EPA intends to deny Weyerhaeuser's request for an extension for the condensate collection system because the Pulp and Paper MACT provides several options to compensate for the variability of methanol content in the condensate stream which the company has concerns about. A source has 15 calender days upon receipt of the letter to provide additional information to EPA before the request is formally denied. For its bleaching system, EPA grants a conditional approval for an extension as the company states that the installation of new washers would only be necessary should other options fail to bring the mill into compliance with the MACT standards.

Abstract for [M030044]

Q: Will EPA extend the compliance date for a paste production plant subject to 40 CFR part 63, subpart LL?

A: No. Given that the facility has successfully demonstrated compliance with the polycyclic organic matter emission standard, EPA finds no reason to extend the compliance date.

Abstract for [M030045]

Q: Will EPA extend the compliance date for a paste production plant subject to 40 CFR part 63, subpart LL?

A: No. EPA has found that additional time is not necessary for installation of controls in order to comply with the applicable polycyclic organic matter emission standard. EPA received no additional information or arguments in support of the request within 15 calendar days of receipt of the denial notice (refer to determination M030044 on this ADI update). EPA is hereby formally denying the compliance extension request.

Abstract for [M030046]

Q1: Are the performance test results for Tank 5 and Tank 6 acceptable to determine initial compliance with MACT subpart N?

A1: Yes. EPA accepts the performance test results despite the sampling deviations because of the large margin of compliance. However, the company is required to request EPA approval prior to conducting additional performance testing utilizing the deviations.

Q2: May a company monitor continuous compliance with the 0.015mg/dscm total chromium emission standard by conducting a week-long test three times per year?

A2: No. EPA does not approve the proposed monitoring plan because it does not adequately determine continuous compliance.

Q3: May the company receive a performance test waiver for Tank 4 and Tank 26 based partly upon the performance test results for Tank 5 and Tank 6, and the implementation of the proposed monitoring plan?

A3: No. EPA denies the request because the operating conditions for Tank 4 and Tank 26 are different from those for Tank 5 and Tank 6. In addition, EPA denies the proposed monitoring plan.

Abstract for [M030047]

Q: Will EPA grant a performance test waiver for the hard chromium electroplating operation subject to MACT Subpart N?

A: Yes. EPA grants the facility a waiver from the performance testing requirements of 40 CFR 63.344 because the facility satisfies the conditions established in EPA's source test waiver policy issued on January 16, 1998, for very small hard chromium electroplaters.

Abstract for [M030048]

Q: Will EPA require a facility to conduct another performance test for the hard chromium electroplating operation while operating a 12,000 amperage rectifier given that an initial performance test was conducted while operating a 6,000 amperage rectifier?

A: Yes. Given the unknown compliance status of the operation while utilizing the 12,000 amperage rectifier, Region 10, utilizing the Administrator's authority under section 114(a) of the CAA, requires the facility to conduct another performance test.

Abstract for [M030049]

Q1: Will EPA approve a compliance extension request under Part 63, Subpart LL for a primary aluminum facility in Goldendale, Washington?

A1: Because the Washington Department of Ecology (WDOE) has the interim authority to grant compliance extensions, EPA defers to WDOE to process the request.

Q2: Will EPA approve the use of a high efficiency air filtration (HEAF) scrubber system to control polycyclic organic matter emissions (POM) for the paste production plant?

A2: No. EPA cannot determine whether the HEAF scrubber system is an acceptable alternative to the dry coke scrubber before receiving information demonstrating that the HEAF scrubber system achieves emissions less than 0.011 pounds POM per ton paste produced.

Abstract for [M030050]

Q1: Will EPA approve the use of an high efficiency air filtration (HEAF) scrubber system to control polycyclic organic matter emissions for the paste production plant?

A1: Yes. Based upon the September 8–10, 1999, emissions data and EPA's inspection, EPA has concluded that the HEAF system can achieve the applicable emission rate. Therefore, EPA approves the use of the HEAF system as an alternative control device.

Q2: Will EPA approve a plan to monitor the emission control device?

A2: Yes. EPA approves the monitoring plan because it satisfies the requirements and intent of 40 CFR 63.848(f).

Abstract for [M030051]

Q: Under part 63, subpart MM, may a company with a smelt dissolving tank that is equipped with a dynamic scrubber conduct monitoring of amperage in lieu of pressure drop across the control device?

A: Yes. Pressure drop is not the best indicator of control device performance for low-energy entrainment scrubbers. Measuring the scrubbing liquid flow rate and amperage, since fan speed does not vary for the fans used in this application, should be sufficient for demonstrating continuous compliance.

Abstract for [M030052]

Q: Will EPA approve a standard for hazardous air pollutants (HAPs) metal emissions for a mineral wool production facility in lieu of the particulate matter (PM) emission standard in 40 CFR 63.1178?

A: No. The PM surrogate is used because sufficient industry data is not available to establish a metals emissions limit and because reliable monitoring for some HAP metals is not currently available.

Abstract for [M030053]

Q: May a facility with a recovery furnace that is equipped with an electrostatic precipitator (ESP) monitor precipitator power level as an alternative to the continuous opacity monitoring system (COMS) required by 40 CFR 63.864(a)?

A: Because the existing stack configuration is not conducive to a COMS application and would probably not be conducive to applying a

particulate matter continuous emission monitoring system, EPA is willing to consider an alternative monitoring approach based on ESP power values and device design, and requests a monitoring plan to support this proposal.

Abstract for [M030054]

Q: Will EPA allow an alternative monitoring plan (AMP) for the continuous opacity monitoring (COM) requirements set in MACT subpart UUU?

A: Yes. EPA approves the AMP for opacity readings from the fluid catalytic cracking unit catalyst regenerator because opacity measurements cannot be accurately read by a COM due to the presence of condensed water in the wet scrubber stack. The alternative is the same plan already approved for the unit under a preexisting permit condition as part of an alternative NSPS monitoring plan, and the MACT and NSPS limits for particulate matter are the same emission limits.

Abstract for [M030055]

Q: Will EPA allow monitoring amperage in lieu of pressure drop across the control device of a smelt dissolving tank equipped with a dynamic scrubber?

A: Yes. Pressure drop is not the best indicator of control device performance for low-energy entrainment scrubbers. Measuring the scrubbing liquid flow rate and amperage, since fan speed does not vary for the fans used in this application, should be sufficient for demonstrating continuous compliance.

Abstract for [M030056]

Q: Will EPA approve a standard for hazardous air pollutants (HAPs) metal emissions in lieu of the PM emission standard in 40 CFR 63.1178 for a mineral wool production facility (40 CFR part 63, subpart DDD)?

A: No. The PM surrogate is used because sufficient industry data is not available to establish a metals emissions limit and because reliable monitoring for some HAPs metals is not currently available.

Abstract for [M030057]

Q: A facility with a recovery furnace equipped with an electrostatic precipitator (ESP) proposes monitoring precipitator power level as an alternative to the continuous opacity monitoring system (COMS) required by 40 CFR 63.864(a). Is this acceptable?

A: Because the existing stack configuration is not conducive to COMS application and would probably not be conducive to applying a particulate matter continuous emission monitoring system, EPA is willing to consider an alternative monitoring approach based on ESP power values and device design. A monitoring plan to support this proposal is requested.

Abstract for [M030058]

Q1: If gasoline loading racks for a bulk gasoline terminal located at a petroleum refinery subject to 40 CFR part 63, subpart CC, load Isomerate, a gasoline blending stock, into cargo tank trucks, is the owner or operator of the racks and terminal required to continuously demonstrate compliance with the hazardous air pollutant vapor processing unit's emission standard of 40 CFR part 63, subpart R, as incorporated by reference into 40 CFR part 63, subpart CC?

A1: Yes. The Isomerate blending stock produced at the refinery satisfies the definition of "gasoline" in 40 CFR 63.641.

Q2: For the purpose of implementing NESHAP part 63 regulations, is the definition of "gasoline" in 40 CFR part 80, applicable under 40 CFR part 63?

A2: No. The definition of "gasoline" in 40 CFR part 80 was published to enable implementation of a section of the CAA other than section 112 and the part 80 definition is not applicable for the purpose of implementing NESHAP part 63.

Abstract for [M030059]

Q. A facility wishes to take restrictions on its hazardous air pollutant potential to emit after January 20, 2003, the compliance date for the amino/phenolic resins MACT standard (40 CFR part 63, subpart OOO). Does it remain subject to the MACT standard and the Title V operating permit program as a major source?

A. Yes. Under EPA's May 16, 1995 policy "Potential to Emit for MACT standards—Guidance on Timing Issues," if a facility is a major HAP source on the compliance date for that standard and it meets the applicability criteria for the standard, it remains permanently subject to that standard as a major source. It follows that it remains subject to the Title V operating permit program.

Abstract for [M030060]

Q: Is the B & B Metals Processing Company facility in Newton, Wisconsin, subject to the Secondary Aluminum NESHAP, 40 CFR part 63, subpart RRR?

A: Yes. The facility melts and alloys aluminum scrap in a furnace operation.

Abstract for [M030061]

Q1: May the Lubrizol hazardous waste incinerator in Painesville, Ohio (Lubrizol), subject to 40 CFR part 63, subpart EEE, combine the total and pumpable waste feed rates to the primary and secondary combustion chambers, in lieu of establishing maximum total and pumpable feed rate limits to each chamber?

A1: Yes, provided that Lubrizol demonstrates compliance with destruction and removal efficiency (DRE) and dioxin/furan standards with maximum feed rates during the comprehensive performance test (CPT).

Q2: May Lubrizol establish minimum and maximum pressure drops across its bag house and monitor that pressure drop? The U.S. EPA has withdrawn the requirement to do this across each cell of a bag house.

A2: Yes. Until the U.S. EPA promulgates monitoring requirements for baghouses, the monitoring requirements for particulate matter control devices other than wet scrubbers apply.

Q3: To ensure that the concentration of suspended particles in the scrubber liquid does not exceed the concentration during the CPT, may Lubrizol elect to establish a minimum blowdown rate only, if 40 CFR 63.1209(m)(1)(i)(B)(1) also requires sources to either establish a minimum scrubber tank volume or liquid level if electing this option in lieu of a scrubber liquid solids concentration limit?

A3: Yes. Scrubber liquid can exit the scrubber only through a fixed overflow line. A minimum blowdown rate ensures that the scrubber liquid level remains within a few inches of the overflow line's height. If blowdown falls below the minimum rate, an automatic waste feed cutoff system engages.

Q4: For Lubrizol, will the EPA waive the requirement to establish a minimum pressure for the liquid feed to the wet scrubber?

A4: Yes. Lubrizol's wet scrubber uses an orifice plate, rather than spray nozzles, to distribute the scrubber liquid. The EPA can waive the liquid feed pressure requirement for a wet scrubber that does not rely upon atomization to maintain removal efficiency.

Q5: For Lubrizol, will the EPA waive the requirement to monitor the concentration of regulated pollutants in natural gas, combustion air, and feed streams from vapor recovery systems, fed to the incinerator?

A5: Yes. To qualify for a waiver, the regulation requires that Lubrizol document the expected levels of

regulated pollutants in the feed stream and account for them in documenting compliance with feed rate limits. Lubrizol uses natural gas only during startup, uses only ambient air for combustion, and has no feed streams from vapor recovery.

Q6: May Lubrizol use its methodology to extrapolate feed rate limits for semi-volatile metals (SVM) and low volatile metals (LVM)? Lubrizol's methodology uses the removal efficiency demonstrated during the CPT, the volumetric flow rate at the exhaust stack, an equation to calculate the maximum emission rate at 75 percent of the SVM and LVM limits, and an equation to calculate the allowable SVM and LVM feed rate limits.

A6: Yes. Lubrizol has documented the historical range of metal feed rates for each feed stream. In addition, Lubrizol has demonstrated that the metal concentrations in spiked feed streams are greater than detection limits, and that the spike feed rates will result in exhaust concentrations that are greater than reference method detection limits.

Q7: Will EPA approve a request to waive the requirement to conduct a mercury performance test?

A7: Yes, based on the information provided by the source, EPA can reasonably believe that Lubrizol can continuously demonstrate compliance with the mercury emission standard.

Abstract for [M030062]

Q1: In order to verify proper operation of its electrostatic precipitators, may Von Roll America use the electrostatic precipitator's (ESP) automated voltage/current controllers ("AVC") and establish a minimum total power limit and be in compliance with part 63, subpart EEE?

A1: Yes. EPA concludes that the use of the AVC and a minimum total power operating parameter limit are appropriate monitoring requirements to demonstrate proper operation of the ESP. At the time of this approval, 40 CFR part 63, subpart EEE had no specific required operating parameter limits (OPLs).

Q2: Do the pressurized shrouds and dual seals on the inlet and outlet ends of a rotary kiln and OPLs control combustion system leaks in a manner that is equivalent to maintaining the pressure in the maximum combustion zone below the ambient pressure during pressure spikes? May Von Roll establish three operating parameter limits that will engage the automatic waste feed cut-off system when exceeded?

A2: EPA concludes that the pressurized shrouds, dual seals and OPLs control combustion system leaks in a manner that is equivalent to maintaining the maximum pressure in the combustion zone below the ambient pressure during pressure spikes. EPA concludes that the proposed OPLs address situations when a pressure spike may exceed the shrouds' ability to prevent combustion leaks, and Von Roll may establish the OPLs that the company proposed.

Abstract for [Z030002]

Q: Will EPA approve the construction and waive emission tests of two incinerators subject to Mercury NESHAP?

A: Yes. Since Phillips estimates that in an anticipated worst case scenario, mercury emissions from the two proposed incinerators would be less than one tenth of the emission standard, EPA approves the construction and waives emission tests of the proposed incinerators pursuant to 40 CFR 61.08(b) and 61.13(i)(1).

Abstract for [Z030003]

Q: Are the electric toilets at BP's Northstar Development Project subject to NSPS subpart O and NESHAP subpart E?

A: No. These units are not subject to NSPS subpart O and NESHAP subpart E based on the information provided by BP that these units do not engage in such activities as stated in 40 CFR 60.150 and 61.50.

Abstract for [Z030004]

Q1: Tosco combines affected process wastewater streams for centralized treatment. Is the waste stream flowing to the Roughing Filter with less than 10 ppm benzene exempt from control requirements per NESHAP subpart FF?

A1: No. Based on a detailed review of the regulations and supporting discussion in the 1990 preamble to 40 CFR part 61, subpart FF, the exemption of 40 CFR 61.342(c)(2) does not apply because the facility uses a centralized wastewater treatment system that treats aggregate waste streams, some of which may have benzene concentrations greater than 10 ppm. The control requirements do not allow for avoiding control requirements through intentional or unintentional dilution of waste streams. Thus, waste management units, including the Roughing Filter, are subject to control requirements of 40 CFR 61.348(b).

Q2: Does the exemption of 40 CFR 61.348(b)(2)(ii)(B) apply to Tosco's Roughing Filter?

A2: No. The Roughing Filter is not an enhanced biodegradation unit as defined NESHAP subpart FF.

Q3: What procedures apply if Tosco wanted to seek approval for an alternative means of emission limitation for its Roughing Filter system?

A3: EPA Region 10 does not have the authority to grant Tosco an alternative means of emission limitation. The Assistant Administrator of the Office of Air and Radiation (OAR) along with the Director of the Office of Air Quality Planning and Standards (OAQPS) possess such authority, and the determination indicates how Tosco should follow up on this matter if it remains interested in this option.

Abstract for [0300040]

Q: May a facility derate a boiler whose burner has been replaced with a new natural gas burner such that the Btu/hr?

A: Yes. The facility is eligible to derate the boiler's heat input capacity. A performance test shall be conducted to determine the derated value and a test plan submitted to EPA for approval.

Abstract for [0300047]

Q1: May an opacity monitoring plan be amended to reflect the unique atmospheric and physical conditions for a boiler subject to NSPS subpart D?

A1: Yes. EPA will amend the proposed monitoring plan such that the facility may attempt to conduct at least one observation each day of the month to satisfy the monthly opacity monitoring requirement.

Q2: Will EPA allow the facility to correlate scrubber operating parameters to particulate matter emissions rather than opacity?

A2: No. Opacity monitoring is required to indicate a boiler's compliance status with the 20 percent opacity standard. Therefore, it is appropriate to correlate scrubber operating parameters to Reference Method 9 opacity observations.

Abstract for [0300048]

Q: Will EPA approve a custom fuel monitoring schedule for sulfur and nitrogen for turbines subject to NSPS subpart GG?

A: Yes. EPA approves the customized fuel monitoring for the turbines when using natural gas.

Abstract for [0300049]

Q: Is a boiler whose heat input capacity is less than 10 MMBtu per hour subject to NSPS subpart Dc?

A: No. A boiler whose heat input capacity is less than 10 MMBtu per hour is not subject to NSPS subpart Dc.

Abstract for [0300050]

Q: Will EPA waive the requirement to conduct performance testing of the

refinery fuel gas system for designated heaters?

A: Yes. EPA will waive the requirement to conduct performance testing pursuant to 40 CFR 60.8(b)(4) based on the continuous emission monitoring results that indicate daily hydrogen sulfide (H_2S) concentrations consistently are well below the emission standard and on the understanding that the modifications to the Kenai Refinery will not impact the source's ability to maintain the refinery fuel gas system's standard of environmental performance.

Abstract for [0300051]

Q: Will EPA approve an amended custom fuel monitoring schedule incorporating an annual reporting frequency under NSPS subpart GG for the turbines at Kuparuk Central Production Facility–1 (CPF–1)?

A: Yes. Given documented compliance history and consistent with reporting frequencies for other affected facilities at Kuparuk, EPA approves the request for an annual reporting frequency.

Abstract for [0300052]

Q: Will EPA accept plans for retrofitting a buffer gas system and replacing degassing tanks for bringing compressor seal systems into compliance with NSPS subpart KKK compressor requirements?

A: Yes. The proposed changes are acceptable.

Abstract for [0300053]

Q: May a facility test one of the turbines in each category to demonstrate compliance with the nitrogen oxides (NO_X) emissions standard of 40 CFR 60.332 and waive the performance test for the other identical turbines?

A: Yes. EPA grants this waiver contingent upon forthcoming performance test results clearly demonstrating compliance with the NO_X emissions standard.

Abstract for [0300054]

Q: Will EPA approve an alternative opacity monitoring plan for a boiler subject to NSPS subpart D?

A: Yes. EPA approves of the alternative opacity monitoring plan. Initial Reference Method 9 opacity observations shall be conducted within six months of the date of this letter and the records shall be maintained on-site for a period of five years.

Abstract for [0300055]

Q: Will EPA approve assignment of a dry molecular weight value of 30.0, in lieu of actual measurements, to flue gas from dryers at hot mix asphalt plants under 40 CFR part 60, subpart I?

A: Yes. As demonstrated through source tester experience at fossil fuel-fired combustion sources, utilizing an approximate value for dry gas molecular weight is sufficient to determine an acceptable sample nozzle diameter and isokinetic sampling rate.

Abstract for [0300056]

Q: Will EPA approve the use of the manufacturer's emissions tests to satisfy the subpart GG performance test requirements and waive the requirement to separately test the turbine at the Barrow Utilities and Electric Cooperative, Incorporated, power plant?

A: No. EPA denies this request because the conditions at the testing location are not identical to those at the operating site.

Abstract for [0300057]

Q1: What is the "permanent storage capacity" of a grain handling and storage facility?

A1: Based on the definition in NSPS subpart DD, the permanent storage capacity must include the silos and bins used to store grain regardless of designation by the facility.

Q2: Should the permanent storage capacity take into consideration the "pack factor," as determined by the Department of Agriculture?

A2: No. Permanent storage capacity should not take into consideration the "pack factor." The permanent storage capacity at the facility in question falls below the 2.5 million bushel threshold; thus, the facility is not a grain terminal elevator as defined in NSPS subpart DD.

Q3: If the facility is determined to be subject to subpart DD, should the facility be subject to Title V and Prevention of Significant Deterioration (PSD) requirements as a result of fugitive emissions?

A3: If a facility would be subject to an NSPS such as NSPS subpart DD based on the size and type of the facility, but is not subject to the NSPS solely based on the date of construction, then the Title V and PSD definitions of "major source" (or "major stationary source") require that fugitive emissions be considered in determining if the emissions from the facility exceed the major source threshold for purposes of those permit programs. Because the facility in question does not meet the definition of a grain terminal elevator in NSPS subpart DD, its fugitive emissions should not be included in determining PSD applicability and Title V permitting.

Abstract for [0300058]

Q: EPA has approved Ponderay Newsprint Company's (PNC's) predictive emissions monitoring system (PEMS) as an alternative monitoring method for the NSPS subpart Db propane boiler. Will EPA amend some of the approval conditions to address PNC's concerns regarding PEMS downtime and the RATA test schedule?

A: Yes. EPA has amended the alternative emissions monitoring approval to allow for PEMS downtime due to system breakdown and repair, and to allow for some flexibility in conducting an annual RATA.

Abstract for [0300059]

Q: For part 60, subpart GG, will EPA approve a request to update an existing custom fuel monitoring schedule (CFMS) by incorporating a portable Solar Saturn T–1300 turbine into the CFMS?

A: Yes. EPA will incorporate a portable Solar Saturn T–1300 turbine into the CFMS.

Abstract for [0300060]

Q: Will EPA approve a custom monitoring and reporting schedule under NSPS Subpart Dc for the boiler at Providence Alaska Medical Center?

A: Yes. EPA approves a monthly fuel usage monitoring schedule while firing pipeline quality natural gas. However, EPA denies the request for a custom monitoring and reporting schedule while firing distillate oil because Providence has not yet demonstrated compliance with the 0.5 weight-percent fuel oil sulfur limit.

Abstract for [0300061]

Q: For NSPS subpart GGG Federal Plan Requirements, does Region 10 approve of a test plan for the City of Spokane's Northside Landfill that incorporates alternative sampling and testing procedures already approved by the Office of Air Quality, Planning and Standards (OAQPS)?

A: While the alternative procedures have already been approved, EPA Region 10 determines that the test plan is incomplete, and the facility must amend and resubmit the plan to include sufficient information on specific, enumerated topics to assure that testing is conducted properly in accordance with regulatory requirements.

Abstract for [0300062]

Q: May the requirements for compliance with each aspect of NSPS subpart WWW be avoided (and left out of a Title V permit) for the landfill if a landfill collects its landfill gas and sends it to a separate facility located on leased landfill property for combustion and generation of electricity?

A: No. The Title V permit must incorporate all aspects of NSPS subpart WWW and require the owner and operator of the affected facility to certify compliance with its requirements. The other entity could also be held responsible for those aspects of compliance with NSPS subpart WWW. However, the owner of a regulated facility cannot contract away its liability nor is it relieved of the compliance requirements simply because it has entered into a contract with another entity to perform the regulated activities.

Abstract for [0300063]

Q: Will EPA approve an alternative recordkeeping schedule for burners subject to NSPS subpart Dc?

A: Yes. EPA approves the request to record fuel usage quarterly because the burners combust only natural gas fuels and NSPS subpart Dc contains no applicable emission limitation for natural gas combustion.

Abstract for [0300064]

Q1: May BP Exploration (Alaska) Inc. (BPXA) use a custom fuel monitoring schedule for certain natural gas-fired turbines?

A1: Yes. BPXA may monitor the sulfur content of natural gas once per month rather than once per day because the existing analytical data show that the sulfur content of the gas is consistently well below the 0.8 percent by weight limit.

Q2: May BPXA use "length-of-stain" detector tube techniques as prescribed by the American Society for Testing and Materials and the Gas Processors Association to measure the sulfur content of natural gas?

A2: Yes. Given that the sulfur content of the natural gas is well below the standard, these methods are sufficiently accurate to make a compliance determination.

Q3: May BPXA get a waiver of nitrogen monitoring during performance testing and during periodic monitoring?

A3: Yes. Nitrogen monitoring can be waived for pipeline quality natural gas since there is no fuel-bound nitrogen.

Abstract for [0300065]

Q: Are the electric toilets at British Petroleum Exploration (BP) Northstar Development Project subject to NSPS subpart O and NESHAP subpart E?

A: No. These units are not subject to NSPS subpart O and NESHAP subpart E based on the information provided by BP that these units do not engage in such activities as stated in 40 CFR 60.150 and 61.50.

Abstract for [0300066]

Q: A company with two 55 MMBtu/hr boilers intends to modify the condensate return system such that high temperature feed water is pumped to the boilers at a much higher pressure. Will such a modification, which will increase the steam generating capacity of the boilers, trigger NSPS Subpart Dc applicability?

A: No. Based on the facts presented, the requirements of NSPS subpart Dc will not apply to either boiler upon completion of the proposed project because the project does not constitute a modification under 40 CFR 60.14(a) (*i.e.*, there is no indication that emissions will increase) and does not constitute a reconstruction project under 40 CFR 60.15(b) (*i.e.*, the project budget is only about 10 percent of replacement cost).

Abstract for [0300067]

Q1: Will EPA approve a request to waive the requirement to monitor nitrogen content and to monitor sulfur content of pipeline quality natural gas on a semiannual schedule under NSPS Subpart GG?

A1: Yes. EPA will waive nitrogen monitoring for pipeline quality natural gas, as there is no fuel-bound nitrogen. Fuel gas sulfur monitoring shall be conducted semiannually with hydrogen sulfide (H_2S) concentration less than 2,000 ppmw and daily with H_2S concentration greater than 2,000 ppmw.

Q2: Will EPA approve an alternative method for sulfur content analysis of the natural gas fuel for the Unocal gas turbines?

A2: Yes. EPA approves Unocal's use of an alternate analytical method using the length-of-stain tube test, provided that the sulfur content of the gaseous fuel is well below the 2,000 ppmw threshold.

Abstract for [0300068]

Q: A company plans to burn fuel oil infrequently in an NSPS subpart Db boiler which is equipped to burn natural gas as its primary fuel. Will EPA approve an alternative to the use of a continuous opacity monitoring system?

A: No. EPA denies the request because the boiler's annual capacity factor for No. 2 distillate fuel oil is not limited to 10 percent or less.

Abstract for [0300069]

Q: Will EPA approve Pacific Gas and Electric Gas Transmission's request to revise the May 8, 1996, custom fuel monitoring schedule (CFMS) for 12 compressor stations subject to NSPS subpart GG?

A: Yes. EPA approves the revision to the CFMS to reflect the use of the American Society for Testing and Materials (ASTM) Reference Methods ASTM D 3031–82 and ASTM D 4084–94.

Abstract for [0300070]

Q: Under 40 CFR part 60, subpart GG, may a company conduct quarterly sampling of Light Straight Run (LSR) fuel to determine its sulfur and nitrogen content?

A: Yes. The historical sampling data indicates that the sulfur and nitrogen concentrations of the LSR fuel are consistently and significantly less than allowable level. Therefore, less frequent sampling of the fuel is appropriate.

Abstract for [0300071]

Q: Will EPA approve an extension of the previously approved waiver of the nitrogen content testing requirement, an alternate monitoring plan and an alternate test method to be applicable to other affected stationary gas turbines under 40 CFR part 60, subpart GG?

A: Yes, the previous approvals dated May 4, 1998, and June 8, 1999, are also applicable to the three other turbines located at Barrow, Alaska.

Abstract for [0300072]

Q1: Will EPA approve the Port Townsend Paper Company's (PTPC'S) request to maintain fuel receipts of reprocessed fuel oil as a means of demonstrating compliance with the sulfur dioxide (SO_2) emission limit for an NSPS subpart Db boiler?

A1: No. EPA denies this request for the following reasons: (1) The reprocessed fuel oil does not meet the definition of distillate oil as defined in 40 CFR 60.41b; and (2) PTPC recently received a Notice of Violation from the WDOE for burning fuel in the boiler that contained more than 0.5 weight-percent sulfur.

Q2: Will EPA approve an alternate SO_2 monitoring plan for an NSPS subpart D boiler?

A2: Because EPA has not promulgated a fuel sampling method under 60.45(d) that applies to subpart D boilers, EPA cannot approve an alternative SO_2 monitoring plan under NSPS. Instead, EPA defers to the Title V permitting process to establish a monitoring plan for demonstrating compliance.

Q3: Will EPA approve an alternate opacity monitoring plan for the NSPS subpart D boiler?

A3: PTPC proposed to continuously monitor scrubber liquid and air flow rates. EPA denies this proposal because monitoring these parameters is

insufficient to ensure compliance with the standard.

Abstract for [0300073]

Q: Will EPA approve an alternate opacity monitoring plan for an NSPS subpart D boiler?

A: No. EPA cannot approve the proposed opacity monitoring alternative for the boiler. Instead, a monitoring plan for similar scrubber operating parameters is enclosed for the company to review.

Abstract for [0300074]

Q: Will EPA approve an alternative monitoring plan (AMP) for the NSPS subpart J monitoring requirements that apply to a John Zinc Thermal Oxidizing Flare at a truck loading rack?

A: Yes. EPA approves the AMP because it is consistent with EPA's guidance in "Alternative Monitoring Plan for NSPS subpart J Refinery Fuel Gas" and because the monitoring data demonstrate that the hydrogen sulfide (H_2S) content will be significantly less than the requirement of less than 162 ppmv.

Abstract for [0300075]

Q: May a source receive a waiver of the initial performance test for nitrogen oxides (NO_2) for a new gas turbine subject to NSPS subpart GG?

A: Yes. This waiver is granted because the source has demonstrated that the turbine would be in compliance with the applicable standard for NO_2 emissions.

Abstract for [0300076]

Q: Due to a permanent physical change to a boiler, its heat input capacity decreased to less than 100 MMBtu/hr. Will the boiler be subject to the requirements of NSPS subpart Db?

A: No. The boiler is no longer subject to the requirements of NSPS subpart Db. However, given that the boiler commenced construction after June 9, 1989, the requirements of NSPS subpart Dc apply.

Abstract for [0300077]

Q: Will EPA approve a request under 40 CFR part 60, subpart GG to waive the requirement to monitor nitrogen content and to monitor sulfur content of pipeline quality natural gas on a semiannual basis?

A: Yes. EPA will waive nitrogen monitoring for pipeline quality natural gas, as there is no fuel-bound nitrogen. Fuel gas sulfur monitoring shall be conducted on a semiannual schedule. Specific conditions for confirming sulfur variability of the pipeline quality natural gas must be followed.

Abstract for [0300078]

Q1: Will EPA approve the use of an Alternative monitoring plan (AMP) as the performance test under NSPS subpart Dc for various combustion units firing light straight run (LSR) fuel?

A1: Yes. Pursuant to 40 CFR 60.8(b)(4), EPA waives the requirement for performance testing because the monthly sampling data demonstrate the facility's compliance with the applicable standard.

Q2: Will EPA reconsider and approve the request to reduce the hydrogren sulfide (H_2S) fuel gas monitoring frequency?

A2: Yes. EPA approves the request for less frequent H_2S fuel gas sampling based upon historical monitoring data and current operating conditions. The approval is contingent upon the implementation of a 5-day rolling average action level of 80 ppm for each sulfatreat vessel.

Abstract for [0300079]

Q: Will EPA approve a request for an exemption from performance testing requirements for a heater subject to NSPS subpart J?.

A: Yes. Because the historical data sufficiently demonstrate compliance with the standard, EPA waives the requirement to conduct performance testing per 40 CFR 60.8(b)(4).

Abstract for [0300080]

Q: Will EPA approve a NO_X PEMS to comply with NSPS subpart Db?

A: Yes. EPA approves the PEMS as an alternative monitoring system because the PEMS satisfies the performance specifications prescribed by EPA Region 10. As a condition of this approval, the company must comply with certain requirements.

Abstract for [0300082]

Q: Will EPA approve a request to waive the requirement to monitor nitrogen content and to monitor sulfur content of pipeline quality natural gas on a semiannual basis under NSPS subpart GG?

A: Yes. EPA will waive nitrogen monitoring for pipeline quality natural gas, as there is no fuel-bound nitrogen. Fuel gas sulfur monitoring shall be conducted on a semiannual schedule. Specific conditions for confirming sulfur variability of the pipeline quality natural gas must be followed.

Abstract for [0300083]

Q1: Will EPA approve the use of a continuous emission monitoring system (CEMS) for nitrogen oxides (NO_X) as an alternate method for monitoring the ratio of water to fuel for the turbines subject to NSPS subpart GG?

A1: Yes. Because the NO_X CEMS is expected to provide direct emissions data, pursuant to 40 CFR 60.13(i), EPA approves the use of the NO_X CEMS as an alternative monitoring system to the parametric monitoring system.

Q2: Will EPA approve a waiver of the requirement to conduct performance testing for NO_X for the turbines at four load levels?

A2: Yes. EPA will waive the requirement to conduct performance testing for NO_X for each turbine at four load levels, if a CEMS is used to monitor the emissions of NO_X, and the Relative Accuracy Test Audits (RATA) test results of 40 CFR part 75 are used to demonstrate compliance under NSPS subpart GG.

Abstract for [0300084]

Q: Will EPA approve an alternative monitoring plan (AMP) to use scrubber parameter monitoring instead of a continuous opacity monitoring system (COMS) for opacity monitoring of the catalyst regenerator under NSPS subpart J?

A: Yes. EPA approves the AMP with the provision that weekly sampling and analysis for weight-percent solids in the scrubber liquid shall be added as an additional operating parameter to the AMP.

Abstract for [0300085]

Q: A company deviated from the testing requirements of EPA Reference Method 1 while conducting a performance test of a rotary dryer. May the performance test results be used to determine compliance with NSPS subpart I?

A: Yes. Given the minor nature of the deviation and the facility's ample margin of compliance, EPA has determined that the conducted testing is adequate to determine compliance with the standards. In the future, the company shall utilize a 5×5 sampling matrix per the requirements of Method 1.

Abstract for [0300086]

Q: BPXA utilizes dry low nitrogen oxides (NO_X) technology to control NO_X emissions and intends to conduct source testing in April 1999 for two turbines at the Badami Project. Will EPA waive the initial performance test requirement for the two turbines based on these two conditions?

A: No. These two conditions do not demonstrate each turbine's compliance with the NO_X and SO_2 emissions standards of NSPS subpart GG. Performance testing shall be conducted

within 180 days of initial startup per 40 CFR 60.8(a).

Abstract for [0300087]

Q: Will EPA approve use of the length-of-stain detector tube test to determine sulfur content of natural gas fuel for turbines at the Badami Project on the North Slope of Alaska?

A: Yes. EPA approves this request because the existing data show that the sulfur content of the gas is well below the 8,000 ppmw limit and is not expected to vary significantly.

Abstract for [0300088]

Q: Will EPA grant a source test waiver for one of two identical natural gas-fired turbines subject to NSPS subpart GG at the Badami Project?

A: Yes. Testing on one of the two identical turbines can be waived if one turbine is tested and the nitrogen oxides concentration in the exhaust from the tested unit is less than half of the applicable standard.

Abstract for [0300089]

Q: May BP Exploration (Alaska), Incorporated (BPXA), record fuel usage quarterly rather than daily as prescribed in 40 CFR 60.48c(g) for two heaters at the Badami Project?

A: Yes. Because NSPS subpart Dc contains no emission limit for steam generating units combusting only natural gas fuels, EPA approves BPXA request to record fuel usage quarterly. This approval becomes void if the heaters combust a fuel other than natural gas.

Abstract for [0300090]

Q: May BP Exploration (Alaska), Incorporated (BPXA) record fuel usage quarterly rather than daily as prescribed in 40 CFR 60.48c(g) for the heater at the Liberty Project?

A: Yes. EPA approves this request provided that only natural gas or low sulfur fuel oil are used. This approval is based on the facts that subpart Dc establishes no emission limit for natural gas combustion, and that BPXA intends to demonstrate compliance with the applicable 5,000 ppmw sulfur limit by maintaining fuel supplier certifications per 40 CFR 60.48c(f) while firing diesel fuel.

Abstract for [0300091]

Q1: Will EPA approve an alternate test method to measure sulfur content of gaseous fuels for certain turbines subject to NSPS subpart GG?

A1: Yes. EPA approves the alternate test method incorporating the "length of tube" methodology to measure hydrogen sulfide (H_2S) provided that the sulfur content of the gaseous fuel is well below the applicable limit of 8,000 ppmw.

Q2: Will EPA approve an alternate monitoring plan (AMP) to measure sulfur content of gaseous fuels for turbine GT–2901 at the Milne Point C-Pad?

A2: Yes. EPA approves the enclosed AMP which addresses monitoring and recordkeeping requirements and provides a schedule for sulfur monitoring.

Q3: Will EPA grant a waiver from the gaseous fuel nitrogen monitoring requirement for turbine GT–2901 at the Milne Point C-Pad?

A3: Yes. Contingent upon the use of pipeline quality natural gas, the waiver is granted.

Q4: Will EPA approve a variance from RM 20 testing requirements for the turbines at Milne Point C-Pad and Badami?

A4: EPA approves the proposed preliminary oxygen (O_2) traverse procedure which represents a minor deviation from RM 20 given the existing test port configuration and the associated cost to add another port at Badami. However, stack testing conducted with only one point sampling and at only one load level at Milne Point C-Pad represents a major deviation from reference test methods, and EPA Region 10 has not been delegated the authority to either approve or disapprove such major deviations.

Abstract for [0300092]

Q1: Will EPA approve an alternate test method to measure sulfur content of gaseous fuels for the turbines subject to NSPS subpart GG at the Liberty Project?

A1: Yes. EPA approves the alternate test method incorporating "length of tube" methodology to measure hydrogen sulfide (H_2S) provided that the sulfur content of the gaseous fuel is well below the applicable limit of 8,000 ppmw.

Q2: Will EPA approve an alternate monitoring plan (AMP) to measure sulfur content of gaseous fuels for the turbines at the Liberty Project?

A2: Yes. EPA approves the enclosed AMP which addresses monitoring and recordkeeping requirements and provides a schedule for sulfur monitoring.

Q3: Will EPA grant a waiver from gaseous fuel nitrogen monitoring requirement for the turbines at the Liberty Project?

A3: Yes. Contingent upon the use of pipeline quality natural gas, the waiver is granted.

Abstract for [0300093]

Q: Will EPA approve an alternative test method under NSPS subpart GG for a gas turbine?

A: Yes. EPA approves use of the port location at 54 inches from the exhaust exit because it is considered reasonable given the exhaust stack configuration, and use of an 8-hole probe in the existing 4 ports as long as the multi-hole probe was designed and conforms to the tests specified in EPA Guideline Document GD–031.

Abstract for [0300094]

Q1: May Benton Public Utility District (PUD) use relative accuracy test audit (RATA) data for a nitrogen oxides (NO_X) continuous emission monitoring system (CEMS), specified in 40 CFR part 75, as an alternative for initial compliance testing under NSPS subpart GG?

A1: Yes. EPA approves the request because the measurement differences in collecting data at the sample points allowed in the 40 CFR part 75 CEMS certification procedures for Method 20 sample point selection procedures would not be expected to affect the compliance status under NSPS subpart GG.

Q2: May Benton PUD use the American Society for Testing and Materials (ASTM) Reference Method D3246–81 as an alternative to 40 CFR 60.335(b) and (c) for initial compliance testing for hydrogen sulfide (SO_2)?

A2: Yes. The use of ASTM Method D3246–81 is approved for both 40 CFR 60.8 (performance testing) and 60.13 (monitoring) of the General Provisions for sulfur content.

Q3: May Benton PUD receive a waiver of requirement to monitor nitrogen content of natural gas?

A3: Yes. Nitrogen monitoring shall be waived for natural gas as there is no fuel-bound nitrogen.

Q4: May Benton PUD monitor sulfur content of the gas fuel using an analytical method identified under 40 CFR part 75, appendix D?

A4: Yes. This alternate monitoring method can only be used when natural gas is being burned, and it must be in accordance with 40 CFR part 75, appendix D, section 2.3.3.1.

Q5: May Benton PUD monitor sulfur content of the gas fuel on an annual schedule?

A5: Yes. Sulfur monitoring shall be conducted annually for natural gas in accordance with 40 CFR part 75, appendix D, Table D–5. A change to either supplier or the source of fuel shall be reported to EPA within 30 days.

Abstract for [0300095]

Q: Will EPA approve an alternative opacity monitoring method under NSPS subpart Db for two boilers which burn natural gas as primary fuel but will fire distillate oil infrequently?

A: Yes. EPA approves the request because neither boiler may approach a fuel oil capacity factor of 10 percent given the permitted fuel oil consumption limit. After reviewing Pacific Northwest Sugar Company's (PNSC) proposal and the WDOE Order, EPA concludes that an alternative based upon EPA Reference Method 9 is acceptable. PNSC may institute the opacity monitoring alternative subject to the prescribed conditions.

Abstract for [0300096]

Q: Will EPA approve an alternative monitoring plan (AMP) for turbines subject to NSPS subpart GG?

A: Yes. EPA approves the AMP as attached to EPA's determination.

Abstract for [0300097]

Q: Are two BPXA natural gas-fired burners to be located inside a turbine exhaust stack at its Northstar facility on the North Slope of Alaska subject to NSPS subparts Dc and Db?

A: EPA determines that the supplemental burner with heat input capacity of 52.2 MMBtu/hr is subject to NSPS subpart Dc and is also a duct burner as defined in 40 CFR 60.41c, and the fresh-air burner with heat input capacity of 107.5 MMBtu/hr is subject to NSPS subpart Db and is not a duct burner per the definition provided in 40 CFR 60.41b.

Abstract for [0300098]

Q: A company deviated from the testing requirements of EPA Reference Method 1 while conducting a performance test of a rotary dryer. May the performance test results be used to determine compliance with NSPS subpart I?

A: Yes. Given the minor nature of the deviation and the facility's ample margin of compliance, EPA determines that the conducted testing is adequate to determine compliance with the standards. In the future, the company shall utilize a five-by-five sampling matrix per the requirements of Reference Method 1.

Abstract for [0300101]

Q1: Will EPA allow a source to conduct the initial nitrogen oxides (NO_X) performance testing at base load only instead of at all four loads under NSPS subpart GG?

A1: Yes. EPA will allow the testing to be conducted at base load only under the following conditions: the turbine burns pipeline quality natural gas, the NO_X continuous emission montioring system (CEMS) provides a continuous record of emissions, and the base load is the peak load.

Q2: Will EPA allow the use of data collected during the NO_X CEMS Relative Accuracy Test Audit (RATA) as an alternative to performance testing based on Reference Method 20?

A2: Yes. EPA approves the use of data collected using RATA methods in place of Reference Method 20 because this alternative approach has been approved previously in Region 10 and other EPA Regions, and the amount of sampling conducted during a RATA provides enough representative emissions data to determine compliance.

Abstract for [0300102]

Q: Will EPA approve an alternative monitoring plan for natural gas fuel use from the daily monitoring required by 40 CFR 60.48c(g) to a monthly monitoring schedule?

A: Yes. EPA approves the request for a monthly natural gas monitoring schedule because compliance with NSPS subpart Dc can be adequately verified by keeping fuel usage records on a monthly basis if only natural gas and/or low sulfur oil is burned. The approval is conditioned on the source maintaining records that apportion the fuel use to the affected NSPS subpart Dc boiler separate from fuel use at other, non-subpart Dc boilers at the source.

Abstract for [0300103]

Q1: Will EPA allow use of a monthly fuel usage monitoring system as an alternative to the daily monitoring of fuel usage required under 40 CFR 60.48c(g), NSPS subpart Dc?

A1: Yes. EPA approves the request for an alternative fuel usage monitoring system because compliance can be adequately verified by keeping fuel usage records on a monthly basis if only natural gas, propane, and/or low sulfur oil are burned.

Q2: To apportion fuel use for the affected NSPS Subpart Dc boilers, will EPA approve of an indirect method of recording fuel consumption through the use of burner on-times and vendor-provided maximum propane fuel usage rates?

A2: Yes. EPA approves the proposed indirect method of recording fuel consumption rates because fuel consumption is not used directly to determine compliance with an emission limit.

Abstract for [0300104]

Q: Should the heat input rate for an NSPS subpart D steam generating unit be based on the peak one-hour rate at which it is capable of operating, or on a rate that takes into account the test period for demonstrating compliance and similar definition language in 40 CFR part 60, subpart Db?

A: The input rate of the steam generating unit should be based on a 24-hour full load demonstration measuring peak Btu/hour heat input after achieving steady state conditions. Maximum heat input capacity is "the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the steam generating unit." The facility in question has units that operate at an input rate of 242.55 MMBtu/hr, even though the units are capable of reaching a peak one-hour rate in excess of 250 MMBtu/hr. Thus, the provisions of 40 CFR 60.40 under NSPS subpart D do not apply.

Abstract for [0300105]

Q1: What is the affected facility for purposes of NSPS subpart GG where the source has a package unit that consists of separate gas and reactor equipment components?

A1: The gas turbine affected facility for purposes of NSPS subpart GG is the "Mainline Unit Package," which is comprised of a gas component that produces the high-energy exhaust gas flow and a reaction component that receives the exhaust gas flow and is made up of the diffuser/bladed wheel and shaft.

Q2: If the gas component of the "Mainline Unit Package" turbine is removed routinely for maintenance and replaced by an identical model, does this rotation constitute a modification of the affected facility?

A2: If the rotation of the gas components increases emissions, the source must review the replacement to determine if the Mainline Unit Package is subject to NSPS subpart GG pursuant to the modification provisions. The source also must review the rotation of the gas components to determine whether the replacement of a gas component exceeds 50 percent of the fixed capital cost of the "Mainline Unit Package" which would constitute a "reconstruction" under 40 CFR 60.15.

Q3: Does the addition of rim cooling to a "Mainline Unit Package" result in a modification that would make the turbine an affected facility under NSPS subpart GG?

A3: Based on the information presented by the source, the addition of

rim cooling does result in an increase in emissions of air pollutants, but this increase occurs as a result of an increase in production rate. Under the NSPS modification provisions, increases in production rate that increase emissions will trigger applicability only if the increased production rate requires a capital expenditure. EPA believes that in this case a capital expenditure may have occurred, but the source may evaluate and provide further documentation to show that no capital expenditure was required.

Abstract for [0300106]

Q: Will EPA approve a variance to the daily fuel monitoring requirement of 40 CFR 60.48c(g) to a monthly monitoring schedule for a boiler subject to NSPS subpart Dc?

A: Yes. EPA approves the request for a monthly monitoring schedule of fuel usage for the boiler because compliance can be adequately verified by keeping fuel usage sulfur oil are burned. The approval is conditioned on the source maintaining records that apportion the fuel use to the affected subpart Dc boiler separate from fuel use at other, non-subpart Dc boilers at the source. The information provided by the source indicates that at least one other boiler is at the facility, and no regulatory determinations about that boiler were requested or made in this determination.

Abstract for [0300107]

Q: Will EPA approve an alternative monitoring plan (AMP) for two NSPS subpart Dc boilers so that the recording and maintenance of the amount of fuel combusted can be performed on a monthly basis instead of daily?

A: Yes. EPA approves the request to reduce fuel monitoring frequency from daily to monthly because compliance can be adequately verified by keeping fuel usage records on a monthly sulfur oil are burned as defined at 40 CFR 60.41c. The approval is conditioned on the source maintaining records that apportion the fuel use between the two affected subpart Dc boilers.

Abstract for [0300108]

Q: Will EPA allow a variance to the daily fuel monitoring requirement of 40 CFR 60.48c so that the source can record natural gas usage for two NSPS subpart Dc boilers on a monthly basis using natural gas fuel bills?

A: Yes. EPA approves the alternative method requested because compliance can be adequately verified by keeping fuel usage records on a monthly basis if only natural gas and/or low sulfur oil are burned. EPA also approves the method proposed by the source to apportion the fuel usage between the two boilers.

Abstract for [0300109]

Q: Will EPA concur in an interpretation that a source can use vendor receipts to document the fuel oil combusted in an NSPS subpart Db boiler?

A: Yes. EPA concurs with the monitoring approach because fuel receipts from fuel vendors is documentation in compliance with 40 CFR 60.42b(j), 60.45b(c), (d), and (j), 60.47b(a) and (b), and 60.49b(r).

Abstract for [0300111]

Q: Will EPA approve a periodic monitoring plan of hydrogen sulfide (H_2S) concentration in fuel gas as an alternative monitoring plan (AMP) to the required continuous monitoring system?

A: Yes. EPA accepts the AMP because it provides adequate assurance that the H_2S concentration in the fuel gas will be less than the NSPS subpart J emission limitation.

Abstract for [0300112]

Q: Will EPA approve a waiver of the fuel gas nitrogen monitoring of stationary gas turbines required by 40 CFR 60.334?

A: Yes. EPA approves the waiver of natural gas nitrogen monitoring since only pipeline-quality natural gas is used, which is virtually free of fuel-bound nitrogen. The waiver is subject to specific conditions enumerated in EPA's determination letter.

Abstract for [0300113]

Q: Will EPA accept an alternative monitoring plant to reduce the recording of fuel usage in two NSPS subpart Dc steam generating boilers from daily to monthly?

A: Yes. EPA approves the request to reduce the recording of fuel usage because compliance can be adequately verified by keeping fuel usage records on a monthly basis if only natural gas and/or low sulfur oil are burned. EPA also provides an acceptable method for apportioning the fuel usage between the two affected boilers.

Abstract for [0300114]

Q1: Will EPA approve keeping records of natural gas fuel usage on a monthly basis for NSPS subpart Dc boilers, rather than on a daily basis as required by 40 CFR 60.48c(g)?

A1: Yes. EPA approves the request to reduce fuel gas usage recordkeeping because compliance can be adequately verified by keeping fuel usage records on a monthly basis if only natural gas and/or low sulfur oil are burned.

Q2: Will EPA approve of an apportionment method to estimate the amount of natural gas used between boilers where more than one boiler is attached to a fuel gas meter?

A2: Yes. EPA approves the request for an apportionment method to divide each boiler's design heat input capacity by the total design input capacities of all the natural gas-fired combustion units. This method is consistent with the recordkeeping requirement in 40 CFR 60.48c(g) that applies to each separate affected facility (*i.e.*, boiler) regulated under NSPS subpart Dc.

Abstract for [0300115]

Q1: Will EPA accept the waiver of the nitrogen monitoring requirement for owners and operators of combustion turbines subject to NSPS subpart GG without intermediate bulk storage for fuel?

A1: Yes. EPA approves the waiver because this fuel does not contain fuel-bound nitrogen, and any free nitrogen that it may contain does not contribute appreciably to the formation of nitrogen oxides emissions.

Q2: Will EPA approve an alternative custom fuel monitoring plan for gas-fired combustion turbines?

A2: Yes. EPA approves the request for an alternative fuel monitoring plan because it is consistent with EPA's August 1987 fuel monitoring policy which approves the reduction of monitoring from a daily to a semiannual basis.

Q3: Will EPA accept the replacement of the multiple load-testing requirements with a single load test while operating the combustion turbine at maximum load conditions?

A3: Yes. EPA approves the waiver from multiple load testing because for combustion turbines equipped with nitrogen oxides (NO_X) continuous emission monitoring system (CEMS), the monitors will provide credible evidence regarding the unit's compliance status on a continuous basis following the initial test.

Q4: Will EPA accept the waiver of the requirement to report NO_X performance test results on an ISO-corrected basis?

A4: Yes. EPA approves the waiver because the level of compliance assurance provided in this case is sufficient.

Abstract for [0300116]

Q: Are kilns heated using indirect fired natural gas burners subject to 40 CFR 60.40c (NSPS subpart Dc)?

A: No. The kilns are not subject to subpart Dc because they do not transfer

heat from the combustion gases to a heat transfer medium across a physical barrier as a steam generating unit would.

Abstract for [0300117]

Q: Does NSPS subpart GG apply to quality control (QC) testing operations at Pratt & Whitney's Willgoos facility?

A: No. The GG8 engines undergoing QC testing are not subject to NSPS subpart GG. The determination is based on several unique factors cited in the July 25, 2002 letter and is therefore limited to the quality control (QC) testing of the GG8 engines at Willgoos.

Abstract for [0300118]

Q: Will EPA approve recording fuel use on a monthly basis and reporting it on an annual basis for a facility with a pipeline natural gas-fired auxiliary boiler under NSPS subpart Dc?

A: Yes. Because none of the emission standards of Subpart Dc apply to units fired with natural gas, fuel usage records are kept to verify the type of fuel combusted. However, it is necessary to keep separate records of the amount of natural gas burned in each such boiler.

Abstract for [0300119]

Q1: Can a facility with combined cycle turbine units burning only pipeline natural gas waive the daily fuel nitrogen content monitoring requirements of 40 CFR 60.334(b) and 40 CFR 60.335?

A1: Yes. The daily fuel nitrogen monitoring requirements can be waived based on the National Policy, dated August 14, 1987, which allows EPA approval of NSPS subpart GG custom fuel monitoring schedules on a case-by-case basis, and the knowledge that pipeline quality natural gas does not contain fuel-bound nitrogen.

Q2: Can the facility waive the daily fuel sulfur content monitoring requirements of 40 CFR 60.334(b) and in lieu thereof use 40 CFR part 75, appendix D, section 2.3.1.4, "Documentation that a Fuel is Pipeline Natural Gas," and (from 40 CFR part 75, appendix D, section 2.3.1.1) a default SO_2 emission rate of 0.0006 lb./MMbtu?

A2: Yes. Based on National Policy dated August 14, 1987 for stationary gas turbines which combust pipeline quality natural gas as fuel. However, the facility is required to report excess SO_2 emissions under 40 CFR 60.7(c).

Q3: Can this facility waive the sulfur oxides (SO_2) compliance testing requirements of 40 CFR 60.335 and in lieu thereof use 40 CFR part 75, appendix D, section 2.3.1.4 "Documentation that a Fuel is Pipeline Natural Gas" and (from 40 CFR part 75, appendix D, section 2.3.1.1) a default SO_2 emission rate of 0.0006 lb./MMbtu?

A3: Yes, provided the facility successfully documents that they are using pipeline natural gas following 40 CFR part 75, appendix D, section 2.3.1.4, "Documentation that a Fuel is Pipeline Natural Gas."

Q4: Rather than demonstrating nitrogen oxides (NO_X) emission limit requirements for the combustion turbines in International Standard Organization (ISO) ambient conditions as required in 40 CFR 60.335(c)(1), may the facility demonstrate compliance with an hourly limit of 3.5 ppmvd at 15 percent oxygen?

A4: Yes. The facility proposes maintaining NO_X emission rates in ppmvd with a limit of 3.5 ppmvd at 15 percent oxygen, which is more than an order of magnitude below the NSPS subpart GG standard. EPA approves this request since it ensures compliance with the applicable standard under all reasonably expected ambient conditions. However, the facility must maintain records of ambient temperature, combustor inlet pressure and humidity to allow an ISO correction.

Q5: Can this facility waive the requirement to conduct four load Reference Method 20 sampling, and in lieu thereof use NO_X continuous emission monitoring system Relative Accuracy Test Audit (RATA) data for demonstrating compliance with the 3.5 ppmvd limit?

A5: Yes, because demonstration of initial compliance with the hourly limit of 3.5 ppmvd at 15 percent oxygen ensures compliance with the applicable standard under all reasonably expected ambient conditions.

Q6: Does EPA concur that emissions reporting under 40 CFR 60.334(c) is not applicable since the combustion turbines at this facility do not utilize water injection to control NO_X emissions? Will EPA accept excess emissions reporting in accordance with the Plan Approval in lieu of reporting under 40 CFR 60.7(c)?

A6: No. Although EPA agrees the parameters used to determine excess NO_X emissions in 40 CFR 60.334(c), fuel-bound nitrogen and water-to-fuel ratio, are not appropriate in this instance, the facility will operate NO_X CEMS in accordance with 40 CFR part 75 and provide reports under 40 CFR 60.7(c).

Q7: Will EPA allow testing and monitoring for all emissions to be conducted in the stack after the heat recovery steam generator (HRSG) and selective catalytic reduction (SCR) systems rather than for the NSPS Subpart Da duct burners alone as stated in 40 CFR 60.40a(b), since there are no acceptable testing locations upstream and downstream of the duct burners?

A7: No. An alternative method is unnecessary since there are testing options already provided in the current regulation that allow sampling the combined effluent. These options are explained in the determination letter.

Q8: For the duct burners subject to NSPS subpart Da, can this facility waive the SO_2 compliance testing requirements of 40 CFR 60.46a and 60.48a and in lieu thereof use 40 CFR part 75, appendix D, section 2.3.1.4, "Documentation that a Fuel is Pipeline Natural Gas," and (from 40 CFR part 75, appendix D, section 2.3.1.1) a default emission rate of 0.0006 lb SO_2/MMbtu?

A8: Yes. EPA approves your request to use 40 CFR part 75, appendix D, section 2.3.1.4 and section 2.3.1.1 in lieu of 40 CFR 60.46a and 60.48a compliance testing to demonstrate compliance with the 40 CFR 60.43a standard, because SO_2 emissions generated by burning pipeline natural gas should be at least one order of magnitude below the standard in NSPS subpart Da.

Q9: Will EPA approve use of the reporting and recordkeeping requirements for SO_2 emissions in 40 CFR part 75 in lieu of the requirements in 40 CFR 60.49a?

A9: No. The facility must satisfy the reporting and recordkeeping requirements for SO_2 emissions in 40 CFR 60.49a.

Q10: Will EPA approve use of the initial compliance demonstration with a NO_X limit of 3.5 ppmvd at 15 percent oxygen to demonstrate compliance with the 1.6 lb./mw-hr standard listed in 40 CFR 60.44a(d)(1)?

A10: Yes, because the proposed alternative is more than an order of magnitude more stringent than the NSPS subpart GG standard.

Q11: In the event the Administrator requests demonstration of the lb./mw-hr limit at a later date, may the facility use the 40 CFR part 75 monitoring records to reproduce emission rates?

A11: Yes, the 40 CFR part 75 monitoring records will be sufficient to reproduce NO_X emission rates.

Q12: Can the facility use the NO_X reporting requirements in their Plan Approval to meet the NO_X reporting requirements of 40 CFR 60.49a and 60.7(c).

A12: No. The facility must satisfy the reporting requirements for NO_X emissions in 40 CFR 60.49a and 60.7(c).

Abstract for [0300120]

Q1: Is an internal combustion (IC) engine considered an "enclosed combustor" as defined in NSPS subpart WWW?

A1: In the preamble to the 1991 Federal Register proposal of the Landfill NSPS/Emissions Guidelines (56 FR 24468, 5/30/91), EPA included a listing of enclosed combustion devices, which also included IC engines. Therefore, the IC engines at the Ridgewood Power plant located at the Central Landfill are considered enclosed combustors.

Q2: If the IC engines are enclosed combustors subject to NSPS subpart WWW, will EPA approve an alternative parameter monitoring plan for the engines?

A2: Yes, EPA will approve the plan, as provided for and enumerated in EPA's determination letter.

Abstract for [0300121]

Q: What constitutes a "treatment system" according to NSPS subpart WWW, and does the treatment system at Ridgewood Power Associates in Johnston, Rhode Island satisfy the requirements of 40 CFR 60.752?

A: The pretreatment system employed by Ridgewood Power does meet EPA's criteria for a treatment system as defined under 40 CFR 60.752(b)(2)(iii)(C). Treatment of the landfill gas in this manner is a means of compliance with the gas control requirements of the NSPS. EPA Region 1 concurs that the IC engines combusting the treated landfill gas are not subject to the requirements of 40 CFR 60.752(b)(2)(iii)(B).

Abstract for [0300122]

Q: As an alternative to installing and certifying a COMS, can Penreco perform Reference Method 9 for visible emissions observations whenever oil is burned in an NSPS subpart Dc boiler?

A: Yes. Alternative opacity monitoring can be performed in lieu of installing and certifying a COMS, however, specific procedures outlined in EPA's response must be followed to ensure compliance with this approval. The procedures are consistent with those that EPA has approved for other NSPS subpart Dc boilers that burn gas as a primary fuel and that have an annual capacity factor of 10 percent or less for oil when used as a backup fuel.

Abstract for [0300123]

Q: Is coke oven gas considered equivalent to coal under NSPS subpart Db?

A: Yes. As defined in NSPS subpart Db, coal includes coal-derived synthetic fuels. Since coke oven gas is a synthetic fuel derived from coal, it is considered equivalent to coal.

Abstract for [0300124]

Q: When determining whether a piece of equipment is in light liquid service or heavy liquid service under NSPS subpart VV, should the vapor pressure of water be considered?

A: No. The vapor pressure of water is not considered. Applicability of NSPS subpart VV is based on the content of VOC in the process fluid and the volatility of the VOC components.

Abstract for [0300125]

Q: Is the Janesville Disposal Facility (JDF), which is governed by a federal consent decree, and for which applicable or relevant and appropriate requirements (ARARs) apply pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), also subject to the Federal Plan at 40 CFR part 62?

A: Yes. The municipal solid waste landfill is affected by the EPA's Emission Guidelines for municipal solid waste landfills, and the Federal Plan promulgated thereunder at 40 CFR part 62, because it is adjacent to and part of a facility that is subject to the Federal Plan. However, it is not subject to specific provisions of the Federal Plan. This is because the ARARs established under CERCLA govern the landfill's emissions controls. Moreover, the ARARs for the Superfund site do not include administrative requirements such as reporting; hence, EPA will not require an initial design capacity report for the JDF portion of the landfill.

Abstract for [0300126]

Q: Does the replacement of an individual coal conveyor constitute construction or reconstruction of an affected facility or must one view the conveyors collectively as a group when determining if the replacement or construction of an individual conveyor constitutes the construction or reconstruction of an affected facility?

A: Each conveyor must be evaluated individually to determine if the replacement of a single conveyor creates an affected facility subject to 40 CFR part 60, subpart Y. Based on the wording of the regulation, each conveyor is viewed individually. This determination was also based on previous determinations concerning the applicability of NSPS subpart Y.

Abstract for [0300127]

Q1: Does the replacement of an individual coal conveyor constitute construction or reconstruction of an affected facility or must one view the conveyors collectively as a group when determining if the replacement or construction of an individual conveyor constitutes the construction or reconstruction of an affected facility?

A1: Each conveyor must be evaluated individually to determine if the replacement of a single conveyor creates an affected facility subject to 40 CFR part 60, subpart Y. Based on the wording of the regulation, each conveyor is viewed individually. This determination confirms an earlier determination (refer to determination 0300126 on this ADI update) and was also based on previous determinations concerning the applicability of NSPS subpart Y.

Q2: When evaluating applicability of NSPS subpart Y to coal processing and conveying equipment at a coal preparation plant, does one include all coal preparation equipment as a whole (system) or does one view each piece of processing and conveying equipment as a separate affected facility?

A2: The NSPS General Provisions in subpart A define affected facility as any apparatus to which a standard is applicable. In general, when EPA seeks to regulate a process as a whole, the regulation will refer to a system or facility or will use the term "all" when describing the equipment that is part of the affected facility. Because NSPS subpart Y defines coal processing and conveying equipment to be any machinery and because EPA did not identify coal processing and conveying equipment as a system, the affected facility is each individual coal conveyor.

Dated: January 30, 2004.

Lisa Lund,

Acting Director, Office of Compliance.

[FR Doc. 04–3716 Filed 2–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6648–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed February 9, 2004, through February 13, 2004,

Pursuant to 40 CFR 1506.9.

EIS No. 040066, Draft EIS, NPS, CA, Point Reyes National Seashore (PRNS) and the North District of Golden Gate

National Recreation Area (GGNRA) Fire Management Plan, Implementation, Marin County, CA, Comment Period Ends: April 20, 2004, contact: Roger Wong (415) 464–5243. This document is available on the Internet at: *http://www.nps.gov/pore/.*

EIS No. 040067, Final Supplement, NOA, Atlantic Sea Scallop Fishery Management Plan (FMP), Amendment 10, Introduction of Spatial Management of Adult Scallops, Essential Fish Habitat (EFH), from the Gulf of Maine and Georges Banks to Cape Hatteras, NC, Wait Period Ends: March 22, 2004, contact: Paul Howard (978) 465–0492. This document is available on the Internet at: *http://www.nefmc.org.*

EIS No. 040068, Final Supplement, COE, FL, Central and Southern Florida Project, Tamiami Trail Feature (US Highway 41), Modified Water Deliveries to Everglades National Park, Dade County, FL, Wait Period Ends: March 22, 2004, contact: Jon Moulding (904) 232–2286. This document is available on the Internet at: *http//www.saj.usace.army.mil/dp/tamiami.htm.*

EIS No. 040069, Draft EIS, COE, KY, Pike County (Levisa Fork) Section 202 Flood Damage Reduction Project, Design, Construct and Implement Flood Damage Reduction Measures, Appalachian Mountain, Big Sandy River, Pike County, KY, Comment Period Ends: April 5, 2004, contact: Pete K. Dodgion (304) 399–5636.

EIS No. 040070, Draft EIS, NPS, AZ, Saguaro National Park Fire Management Plan, Implementation, Tucson, AZ, Comment Period Ends: April 20, 2004, contact: Sarah Craighead (520) 733–5130.

EIS No. 040071, Final EIS, AFS, PR, Caribbean National Forest, Constructing the Rio Sabana Picnic Area Construction, Rio Sabana Trail Reconstruction and Highway PR 191 Reconstruction from Km. 21.3 to Km 20.0, Special-Use-Permit, PR, Wait Period Ends: March 22, 2004, contact: Manuel Ortiz (787) 888–5669.

Amended Notices

EIS No. 040025, Draft EIS, USN, MS, Purchase of Land in Hancock County, Mississippi, for a Naval Special Operations Forces Training Range, To Improve Riverine and Jungle Training Available, John C. Stennis Space Center, Hancock County, MS, Comment Period Ends: March 15, 2004, contact: Richard Davis (843) 820–5589. Revision of **Federal Register** Notice published on 01/30/2004: Change in contact person telephone number.

EIS No. 040059, Draft EIS, AFS, AZ, Arizona Snowbowl Facilities Improvements, Proposal to Provide a Consistent/Reliable Operating Season, Coconino National Forest, Coconino County, AZ, Comment period ends: April 12, 2004, contact: Ken Jacobs (928) 774–1147. Revision of **Federal Register** Notice Published on 2/13/2004: CEQ comment period ending 3/29/2004 has been corrected to 4/12/2004 and the Web site has been corrected to *http://www.fs.fed.us/r3/coconino/nepa/index.shtml.*

Dated: February 17, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–3720 Filed 2–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6648–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–K65265–CA Rating EC2, McNally/Sherman Pass Restoration Project, Proposal to Remove Fire-Kill Trees, Road Construction and Associated Restoration of the Area Burned, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA.

Summary: EPA raised environmental concerns on potential impacts to water supplies from using magnesium chloride to reduce road-related fugitive dust emissions and a fungicide SPORAX to control tree stump fungus. The FEIS should include mitigation to reduce or avoid potential adverse impacts when using the compounds.

ERP No. D–DOE–F09004–OH Rating EC2, Portsmouth, Ohio Site Depleted Uranium Hexafluoride Conversion Facility, Construction and Operation, Pike County, OH.

Summary: EPA has environmental concerns over the measurement units and proper reference to NESHAP standards, and the cumulative effects of the new enrichment facility that will be built on the site.

ERP No. D–FHW–G40179–TX Rating LO, Kelly Parkway Project, Construction from U.S. 90 to TX–16, to Improvement Transportation Mobility, Facilitate Economic Development, and Enhance Safety, Funding and U.S. Army COE Section 404 Permit, San Antonio, Bexar County, TX.

Summary: EPA has no objections to the preferred alternative.

ERP No. D–NRC–F06022–IL Rating EC2, Quad Cities Nuclear Power Station Units 1 and 2, Supplement 16 to NUREG–1437, License Renewal, IL.

Summary: EPA has environmental concerns regarding radiological impacts from power updates, and on-site storage and transport of spent fuel rods and waste. EPA requests information regarding potential sediment contamination, and risk estimates for core damage frequency, and site-specific radiation doses.

ERP No. DA–FTA–L40210–WA Rating LO, Central Link Light Rail Transit Project (Sound Transit) Construction and Operation of the North Link Light Rail Extension from Downtown Seattle and Northgate, Funding, Right-of-Way and U.S. Army COE Section Permits, Cities of Seattle, Sea Tac and Tukwila, King County, WA.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project.

Final EISs

ERP No. F–FHW–F40411–MN Trunk Highway 371 Corridor Reconstruction, U.S. Truck Highway 10 to County State Aid Highway (CSAH) Highway 48, Funding, Morrison County, MN.

Summary: EPA has no objections to the preferred alternative.

Dated: February 17, 2004.

Ken Mittelholtz,

Environmental Specialist, Office of Federal Activities.

[FR Doc. 04–3746 Filed 2–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0005; FRL–7341–8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review refined (Level II) terrestrial and aquatic models for probabilistic ecological assessments of pesticides. The FIFRA SAP will meet on March 30–31, 2004 to review Level II terrestrial models and April 1–2, 2004 to review Level II aquatic models.

DATES: The meeting will be held on March 30 through April 2, 2004, from 8:30 a.m. to approximately 5 p.m.

Comments. For the deadline for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before March 1, 2004.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Crowne Plaza Washington-National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Crowne Plaza Washington-National Airport is (703) 416–1600.

Comments. Written comments may be submitted electronically (preferred), by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, Requests to present oral comments, and special seating. To submit nominations to serve as an ad hoc member of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket identification (ID) number OPP–2004–0005 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul I. Lewis for the Level II terrestrial model session and Myrta Christian for the Level II aquatic model session, DFOs, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: *lewis.paul@epa.gov or christian.myrta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFOs listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., FIFRA SAP members and ad hoc members for this meeting) and the meeting agenda will be available as soon as possible, but no later than early March 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number 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. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, 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, and made available in EPA's electronic 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. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0005. 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.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, 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, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0005. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0005. For questions about delivery options, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0005 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, March 25, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. To the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, March 25, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER**

INFORMATION CONTACT and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFOs at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting.* The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). Individuals nominated should have expertise in one or more of the following areas: Avian behavior; avian toxicology; terrestrial and/or aquatic pesticide modeling, including compartmental and/or run-off modeling; terrestrial exposure assessment; aquatic exposure assessment; including expertise in temporal or ephemeral pools; ecological risk assessment; and statistics, including Monte Carlo analysis. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFOs listed under **FOR FURTHER INFORMATION CONTACT** on or before 10 business days from date of publication in the **Federal Register**.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA. Form 3110–48 (5–02)) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a special government employee. The Agency will review all nominations. FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health (NIH) and the National Science Foundation (NSF).

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review refined (Level II) terrestrial and aquatic models (version 2.0.) The review of the Level II terrestrial and aquatic models will occur on March 30–31, 2004 and April 1–2, 2004, respectively. Previous versions of these models were reviewed by the FIFRA SAP on March 13–16, 2001. The terrestrial and aquatic models are a key component of the Agency's initiative to revise the ecological assessment process, focusing on the development of tools and methodologies to conduct probabilistic ecological assessments for pesticides.

Some modifications to the models were in response to the 2001 FIFRA SAP comments and recommendations. Other modifications were based on the suggestions made by the Ecological Committee on FIFRA Risk Assessment Methods, a stakeholder workgroup which provided recommendations to the Agency when this initiative first began. These suggestions, which were evaluated in the context of the 2001 FIFRA SAP review, were discussed within the Agency and in national and international scientific professional meetings.

The Agency is interested in comments and recommendations from the FIFRA SAP regarding the modifications to the models. In addition, the Agency requests that the FIFRA SAP respond to specific questions regarding the terrestrial and aquatic Level II models.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 12, 2004.

Joseph Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 04–3717 Filed 2–19–04; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0017; FRL–7343–4]

Potassium Dihydrogen Phosphate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0017, must be received on or before March 22, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, 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, and made available in EPA's electronic 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. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0017. 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.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, 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, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0017.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0017. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. 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 public docket and EPA's electronic public docket. 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 docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of 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 the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 5, 2004.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Cal Agri Products, LLC

PP 3F6793

EPA has received a pesticide petition 3F6793 from Cal Agri Products, LLC, 10720 McCune Avenue, Los Angeles, CA 90034, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an amendment/expansion of an existing tolerance exemption for the biochemical pesticide potassium dihydrogen phosphate.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Cal Agri Products, LLC has submitted the following summary of information, data, and arguments in support of their

pesticide petition. This summary was prepared by Cal Agri Products, LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Cal Agri Products, LLC has filed a petition for the extension of the existing exemption from the requirement of a tolerance for residues in or on growing crops and raw agricultural commodities for potassium dihydrogen phosphate (KDP), also known as monopotassium phosphate, to include uses as an active ingredient for insect control. KDP is a ubiquitous element in nature and is a common ingredient in many consumer and industrial products used worldwide. KDP is an important nutrient supplement for human health and a common ingredient in pharmaceuticals, food processing and manufacturing. KDP is categorized as a generally recognized as safe (GRAS) compound (21 CFR 182.1073), with minimal risks associated with acute and chronic human exposure when used in accordance with good manufacturing practices. In addition to food applications, KDP is also a common ingredient in many agricultural fertilizers and pesticides. Currently, KDP is registered as an active ingredient in three reduced-risk fungicides (EPA No. 70644–1, 70644–4 and 42519–24) and is exempt from the requirement of a food tolerance under 40 CFR 180.1193, when applied as fungicide in accordance with good agricultural practices. KDP is also exempt from the requirement of a food tolerance under 40 CFR 180.1001 (c) and (e) when used as an inert ingredient in pesticide formulations.

KDP is formulated as a pesticide active ingredient and has been shown to operate as an effective non-toxic control agent of a number of agriculturally important insect pests and pathogens. The pesticide formulation utilizing KDP operates through a non-toxic physical mode of action that effects the insects' protective coating making them vulnerable to disruption and desiccation from the KDP active ingredient. Use patterns for KDP will include foliar applications to food and non-food crops for the control of soft-bodied insects, such as aphids and whiteflies, and foliar pathogens, such as powdery mildew. Proposed uses will also include soil drenches for the control of soil dwelling pathogens. The pesticide formulation will be diluted with water for a use rate of 2,000 to 4,000 parts per million (ppm) (20 to 50 ppm of KDP). Use patterns will include application on agricultural food crops, ornamental and nursery crops grown in fields and greenhouses. Use of the pesticide formulation containing KDP as an active ingredient may be an effective substitute for some highly toxic pesticides (such as some organophosphates) that are currently used to control some of these same pests.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Potassium dihydrogen phosphate (CAS No. 7778–77–0), also known as monopotassium phosphate, is a phosphate and potassium salt compound and described by the empirical formula KH_2PO_4. KDP is produced through the electrolysis of potassium chloride, which in turn, is reacted with phosphoric acid. KDP is an ingredient widely used in processing foods for animal and human consumption and in other consumer products including detergents, creams, lotions, foods, shampoos, and toothpaste. KDP is the active ingredient in three previously registered pesticides (EPA No. 70644–1, 70644–2 and 42519–24) applied for the control of powdery mildew.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residues of KDP are projected to be negligible because of the small amounts applied and the rapid absorption by plants and biodegradability of this compound.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* KDP has been approved by the U.S. Food and Drug Administration (FDA) for use as a food additive and is categorized as a GRAS compound under 21 CFR 182.1073. Consumption of KDP in the typical diet and environmental exposure to KDP is far in excess of any residuals expected to be found on or in food crops from the use of KDP at the rates proposed as a fungicide or insecticide. EPA in granting an exemption from the requirement of a tolerance for KDP. EPA has determined that no harm will result from aggregate exposure to KDP when use as an active ingredient in fungicide formulations or an inert ingredient in other pesticide formulations. Therefore no analytic method for detecting residues of KDP is required.

C. Mammalian Toxicological Profile

KDP has been approved by the FDA for use as a food additive and is categorized as a GRAS compound under 21 CFR 182.1073. It is a common component of many consumer products in the United States and most industrial nations. In 1998, under the initiative of EPA, KDP was listed as exempt from the requirement of a food tolerance when used as a fungicide (40 CFR 180.1193) and additionally, is listed as exempt from the requirement of a food tolerance when used as an inert ingredient in pesticide formulations (40 CFR 180.1001 (c) and (e)). EPA concluded, based on the available scientific information coupled with a lack of reported adverse effects, that KDP does not pose an unreasonable risk to human health or the environment.

1. *Acute toxicity.* KDP has been extensively studied in animal and human studies in both short-term and long-term trials (sub-acute to chronic exposure). Studies have demonstrated an acute oral toxicity lethal dose $(LD)_{50}$ >500 milligrams/kilogram (mg/kg) in female rats, LD_{50} >5,000 mg/kg in male rats and LD_{50} >4,640 mg/kg for rats (toxicity category III) and an acute dermal toxicity lethal dose LD_{50} = 2,000 mg/kg for rabbits (toxicity category III). It has also been determined to be non-irritating to skin in rabbits (toxicity category IV) and a mild eye irritant (toxicity category III). Human experience with KDP has demonstrated that consumption of phosphorus from 30 mg/kg/day to a maximum of 70 mg/kg/day can be tolerated without adverse affect. The FDA recommended daily value of potassium intake is 3,500 mg/day.

2. *Genotoxicity.* There is no evidence of genetoxicity from exposure to KDP. EPA in granting an exemption from tolerance for KDP when used as a fungicide, waived requirement of further testing to determine genotoxicity because of low mammalian toxicity and no reports of adverse effects.

3. *Reproductive and developmental toxicity.* There is no evidence of reproductive or developmental toxicity from exposure to KDP. EPA in granting an exemption from the requirement of a tolerance for KDP when used as a fungicide, waived requirement of further testing to determine reproductive and developmental toxicity because of low mammalian toxicity and no reports of adverse effects.

4. *Subchronic toxicity.* KDP disassociates into potassium and phosphorus ions which are both essential nutrients in mammals. EPA in

granting an exemption from tolerance for KDP when used as a fungicide, waived requirement of further testing to determine subchronic toxicity because of low mammalian toxicity and no reports of adverse effects.

5. *Chronic toxicity.* There is no evidence of chronic toxicity from exposure to KDP. EPA in granting an exemption from the requirement of a tolerance for KDP when used as a fungicide, waived requirement of further testing to determine chronic toxicity because of low mammalian toxicity and no reports of adverse effects.

6. *Animal metabolism.* KDP is a food grade material as established by the FDA under 21 CFR 182.1073. No adverse effects on animal metabolism have been reported in any of the animal studies reviewed.

7. *Metabolite toxicology.* KDP is a food grade material as established by the FDA 21 CFR 182.1073. None of the metabolites of KDP are known or suspected to be toxic.

8. *Endocrine disruption.* KDP does not belong to a class of chemicals known to have adverse effects on the endocrine system. No adverse effects were reported in any of the animal studies reviewed.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* KDP is a food grade material as established by the FDA under 21 CFR 182.1073 and is identified as a GRAS chemical compound. KDP is exempt from the requirement of establishing a tolerance under 40 CFR 180.1193 and 180.1001(c) and (e). Use of KDP as an insecticide (use rates between 20 and 50 ppm) is unlikely to enhance consumer exposure given its ubiquitous nature and rapid biodegradability.

ii. *Drinking water.* There is no expected human exposure to KDP in drinking water as most of it is absorbed when applied to plants.

2. *Non-dietary exposure.* KDP is commonly found in many foods and consumer products and is a ubiquitous element in nature and, as a result, there are numerous routes of non-dietary exposure. In view of the small amount of KDP used in the pesticide formulation, its rapid absorption by plants and the rapid biodegradability of KDP, it is unlikely to influence non-dietary exposure to infants, children, or other consumer groups.

E. Cumulative Exposure

The small amount of KDP used in the proposed pesticide formulation, its rapid absorption by plants and the rapid biodegradability of KDP, make it unlikely that KDP will influence the cumulative exposure to infants, children, or other consumer groups at the proposed use rates.

F. Safety Determination

1. *U.S. population.* Given KDP's low-risk profile and the history of its safe use in pesticides and fertilizers, there is every reason to believe that no additional risk to the U.S. population will result from aggregate exposure to KDP.

2. *Infants and children.* EPA, in granting an exemption from the requirement of a tolerance for KDP when used as a fungicide, has determined that in view of the lack of mammalian toxicity and the history of safe use there is no additional exposure or safety concerns for infants and children from the use of KDP as a pesticide.

G. Effects on the Immune and Endocrine Systems

There are no reports of any adverse effects to immune or endocrine systems in animal studies or to human populations. There is reasonable certainty that no adverse effects will result from the use of KDP as an insecticide.

H. Existing Tolerances

KDP is a food grade material as established by the FDA under 21 CFR 182.1073. KDP is exempt from the requirement of a tolerance under 40 CFR 180.1001(c) and (e) when used as an inert ingredient in pesticide formulations and under 40 CFR 180.1193 when used as a fungicide.

I. International Tolerances

There are no Codex tolerances established for KDP.

[FR Doc. 04–3718 Filed 2–19–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0016; FRL–7343–3]

Ethoxy Dodecyl Phenol; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0016, must be received on or before March 22, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0016. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available

for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, 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, and made available in EPA's electronic 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. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0016. 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.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0016. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, 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, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0016.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0016. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. 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 public docket and EPA's electronic public docket. 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 docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 5, 2004.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Cal Agri Products, LLC

PP 3F6778

EPA has received a pesticide petition 3F6778 from Cal Agri Products, LLC, 10720 McCune Avenue, Los Angeles, CA 90034, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide ethoxy dodecyl phenol in or on growing crops and raw agricultural commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Cal Agri Products, LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Cal Agri Products, LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Cal Agri Products, LLC (CAP) has filed a petition for the exemption from the requirement of tolerance for residues in growing crops and raw agricultural foods for ethoxy dodecyl phenol (EDP), when used as a pesticide active ingredient. EDP is a common component in industrial and consumer products with considerable data demonstrating its safety for use in and around foods (21 CFR 178.3400). EDP is also a common inert ingredient in agricultural pesticides and has been categorized by EPA as a List 4B inert ingredient, identifying it as a compound of minimal toxicological concern. EDP is also currently listed under 40 CFR 180.1001(c) and (e) and 21 CFR 172.710 as exempt from the requirement of a food tolerance when used as an inert ingredient or occasionally as an active ingredient. EDP is formulated as a pesticide active ingredient and has been shown to operate as an effective non-toxic control agent of a number of agriculturally important insect pests and pathogens. The formulation utilizing EDP operates through a non-toxic, physical mode of action that effects the insects' protective coating making them more vulnerable to desiccation from a secondary formulation ingredient. Extensive field trials have shown this formulation to be commercially effective against a number of soft-bodied insect pests and a potential substitute for more toxic pesticides such as the organophosphates which remain the primary pesticides used against some of these pests. The formulation is intended for use primarily against soft-bodied insect pests, such as aphids and whiteflies, and foliar pathogens, such as powdery mildew. Proposed uses include foliar applications to food and non-food crops and soil applications for the control of soil dwelling pests and pathogens. The formulation will be diluted with water for use at a rate of 2,000 to 4,000 parts per million (ppm) (600 to 1,200 ppm of EDP). Use patterns will include application on field and greenhouse grown food crops and on ornamental and nursery crops.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Ethoxy dodecyl phenol (CAS No. 9014–92–0) is in the ethoxylated alkyl phenol chemical family (alpha-(p-dodecylphenyl)-omega-hydroxypoly (oxyethylene) and described by the empirical formula $C_{18}H_{25}–C_6H_4–O(CH_2CH_2O)_7CH_2CH_2OH$. EDP is produced by adding an alpha-olefin to a phenol molecule resulting in an alkyl phenol, which is subsequently ethoxylated by adding ethylene oxide. EDP is commercially available as a viscous clear liquid and is a common surfactant used in many products as a wetting agent, antifoaming agent,

detergent, dispersant, or emulsifier. EDP is listed as an inert ingredient of minimal concern (List 4B) by EPA and is exempt from the requirement of a food tolerance (40 CFR 180.1001(c) and (e)) when used as an inert (or occasionally active) ingredient in pesticide formulations. Furthermore, EDP is approved for use as an indirect food additive (21 CFR 178.3400).

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* At harvest time, residues of EDP are projected to be negligible because this compound degrades rapidly in aerobic environments and even more rapidly when sunlight is present, due to photodegradation of the phenolic ring. Moreover, EDP is an approved food additive established by the Food and Drug Administration (FDA) under 21 CFR 172.710, which permits its use in and around the use of foods, such as a component of food packaging material.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* EPA in granting an exemption from tolerance for EDP as an inert ingredient has previously determined that no harm will result from aggregate exposure to EDP when used as an inert ingredient in pesticide formulations. Therefore, no analytic method for detecting residues have been required.

C. Mammalian Toxicological Profile

Ethoxyl dodecyl phenol (synonym: dodecyl phenol ethoxylate) and other very similar alkylphenol ethoxylates (APEs) (*e.g.*, octylphenol ethoxylate and nonylphenol ethoxylates) are common inert ingredients in many pesticide products in the United States and other nations. In 1995, EPA concluded that the current use patterns of EDP in pesticide products will not adversely affect public health or the environment and reclassified EDP from the list of inert ingredients of unknown toxicity (List 3) to its current classification of minimal risk inert ingredients (List 4B). EDP is also exempt from the requirement of food tolerances by EPA under 40 CFR 180.1001(c) and (e) when used in accordance with good agricultural practice as an inert and occasionally as an active ingredient in pesticide formulations when applied to growing crops or to raw agricultural commodities after harvest.

1. *Acute toxicity.* EDP has been studied extensively in animal testing. Studies have demonstrated an acute oral toxicity, lethal dose (LD_{50} = 2,590 milligrams/kilogram (mg/kg) and 3,300 mg/kg in rats (toxicity category III) and an acute dermal toxicity of LD_{50} = 1,260 mg/kg and 5,000 mg/kg in rabbits (toxicity category III). Occular exposure in rabbits yielded moderate eye irritation at 100 µL/24 hours. Dermal testing in rabbits determined EDP is a primary dermal irritant. Dermal patch tests in humans produced no positive reactions after 15 repeated applications.

2. *Genotoxicity.* There is no evidence of genotoxicity from exposure to EDP. APEs, such as EDP, as a surfactant group are considered non-genotoxic based on a wide variety of *in vivo* and *in vitro* tests.

3. *Developmental toxicity and teratogenicity.* There is no evidence of reproductive or developmental toxicity from exposure to EDP. No effects on reproduction or teratogenicity were found in studies testing daily consumption of EDP at a rate between 50 and 100 mg/kg/day. Acute studies demonstrated no teratogenic effects at doses below 500 mg/kg.

4. *Subchronic toxicity.* Animal studies have demonstrated that daily doses of EDP over 90 days at 100 mg/kg/day resulted in no toxicological effects. Results indicated that the risk of subchronic effects are minimal, particularly from "low-dose" exposure.

5. *Chronic toxicity.* There is no evidence of chronic toxicity from exposure to EDP. EDP's low mammalian toxicity and the lack of any reported negative effects by producers and consumers of EDP, indicate that chronic toxicity at the proposed rates of use would pose minimal concern.

6. *Animal metabolism.* EDP is quickly metabolized and excreted in mammals. No effect on metabolism has been noted, except at very high exposure levels. Further, EDP's low mammalian toxicity and the lack of reported effects by users of EDP in a variety of pesticide and consumer products indicate metabolic effects would be unlikely at the proposed use rates.

7. *Metabolite toxicology.* No evidence of metabolite toxicity in mammals from exposure to EDP has been found or suspected. Based on the low mammalian toxicity of EDP and the lack of reported effects by users of EDP in a variety of pesticide and consumer products suggests that metabolite toxicity would be unlikely at proposed use rates.

8. *Endocrine disruption.* No evidence of endocrine disruption from EDP has been indicated, except at high exposure levels. EDP's low mammalian toxicity and the lack of reported effects by users of EDP in a variety of pesticide and consumer products indicate EDP would be of minimal concern at the proposed use rates.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* EDP is an approved food additive established by the FDA under 21 CFR 172.710, which permits its use in and around the use of foods, such as a component of food packaging material. Use of EDP on food crops is unlikely to enhance consumer exposure given its widespread use in consumer products, its rapid biodegradability and the low end-use concentrations when applied to plants as a pesticide at the proposed use rates.

ii. *Drinking water.* There is no significant human exposure to EDP in drinking water due to the small amounts and low proposed use rates in the pesticide formulation. Additionally, EDP is rapidly degraded in aerobic environments and even more rapidly when sunlight is present, due to photodegradation of the phenolic ring.

2. *Non-dietary exposure.* EDP and other APEs are high production chemicals found in many food and consumer cleaning products. As a result there are numerous routes of non-dietary exposure. The relatively small amount of EDP contained in the pesticide formulation and its limited use (crop protection) is unlikely to influence non-dietary exposure to children or other consumer groups.

E. Cumulative Exposure

EDP and other APEs are high production chemicals found in many food and consumer cleaning products. Due to the low concentrations of EDP used in the pesticide formulation and the rapid degradation of EDP in the environment, EDP presents a minimal risk for cumulative effects in humans or in the environment.

F. Safety Determination

1. *U.S. population.* Research and practical experience using EDP in consumer products have resulted in no reports of adverse effects to human health or the environment. Given the relatively low concentration of EDP in the pesticide formulation and its rapid degradation when applied to crops, there is every reason to believe that no additional risk to the U.S. population will result from aggregate exposure to EDP.

2. *Infants and children.* Given the low-risk profile of EDP, its' widespread use in consumer products and the relatively low concentration of EDP in the proposed pesticide formulation when applied to food crops, EDP is unlikely to pose additional risks to infants and children. In addition, substitution of the pesticide formulation

containing EDP in place of more toxic pesticides, such as organophosphates, may reduce infants and children's overall exposure to residual toxins in and on foods.

G. Effects on the Immune and Endocrine Systems

No evidence of immune or endocrine effects from EDP in mammals have been found or suspected, based on its low mammalian toxicity and the lack of reported effects by users of EDP in a variety of pesticide and consumer products.

H. Existing Tolerances

EDP is listed as exempt from the requirement of a tolerance under 40 CFR 180.1001 (c) and (e) and 21 CFR 172.710 when used as an inert ingredient in pesticide formulations. EDP is also approved for use as an indirect food additive under 21 CFR 178.3400.

I. International Tolerances

There are no known Codex maximum residue levels established for EDP.Archives of Environmental Contamination and Toxicology 26: 540–548.

[FR Doc. 04–3719 Filed 2–19–04; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on February 9, 2004 (69 FR 5986) of the special meeting of the Farm Credit Administration Board (Board) scheduled for February 10, 2004. This notice is to amend the agenda by moving three open session items to the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance The agenda for February 10, 2004, is amended by moving the following three items to the closed session as follows:

Closed Session*

Reports

- Preferred Stock Informational Memorandum
- Syndications—OGC Legal Opinion

New Business—Other

- EEO Director Position

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(2), (c)(8), (c)(9), and (c)(10).

Dated: February 18, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–3816 Filed 2–18–04; 11:47 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 11, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 20, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Global Mobile Personal Communications by Satellite (GMPCS) Authorization, Marketing and Importation Rules.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 19.

Estimated Time Per Response: 24 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 483 hours.

Total Annual Cost: N/A.

Needs and Uses: In November 2003, the Commission adopted rules and policies pertaining to portable Global Mobile Personal Communications by Satellite (GMPCS) transceivers, which include satellite telephones and other portable transceivers operated by end users for communication via direct radio links and satellites. The Commission's rules under 47 CFR Parts 2 and 25 require interested parties to obtain equipment authorization pursuant to the certification procedure in Part 2 of the Commission's rules. The Part 2 certification procedure requires submission of the FCC Form 731 and exhibits to the Commission, including test data showing that a representative sample unit of the devices that would be covered by the certification if it meets the Commission's applicable technical requirements. Additionally, applicants must file the FCC Form 740 with the U.S. Customs Service. Each device subject to certification must be etched, engraved, or permanently labeled with an identification number, preceded by the term "FCC ID." Devices subject to this requirement may not be sold or leased, offered for sale or lease, or imported, shipped, or distributed for sale or lease in the United States prior to grant of a pertinent certification application. The requirement will apply to devices imported, sold, leased,

shipped, or distributed after November 19, 2004. This new certification requirement for portable GMPCS transceivers will help to prevent interference, will reduce radio-frequency ("RF") radiation exposure risk, and will make regulatory treatment of portable GMPCS transceivers consistent with treatment of similar terrestrial wireless devices, such as cellular phones. If the Commission did not obtain such information, it would not be able to ascertain whether the equipment meets the FCC's technical standards for operation in the United States. Furthermore, the data is required to ensure that the equipment will not cause catastrophic interference to other telecommunications services that may impact the health and safety of American citizens.

OMB Control No.: 3060–0807.

Title: Section 51.803, and Supplemental Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 40 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 400 hours.

Total Annual Cost: N/A.

Needs and Uses: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission. See 47 U.S.C. 252(e)(5) and 47 CFR 51.803. In a Public Notice, the Commission set out procedures for filing petitions for preemption pursuant to Section 252(e)(5). All of the information will be used to ensure that petitioners have complied with their obligations under the Communications Act of 1934, as amended.

OMB Control No.: 3060–0741

Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98, Second Report and Order and Memorandum Opinion and Order; Second Order on Reconsideration; CC Docket No. 99–273, First Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,000.

Estimated Time Per Response: 115 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 228,030 hours.

Total Annual Cost: $60,000.

Needs and Uses: In the First Report and Order issued in CC Docket No. 99–273, the Commission adopts several of its tentative conclusions. The Commission concludes that local exchange carriers (LECs) must provide competing director assistance (DA) providers that qualify under Section 251 with nondiscriminatory access to the LEC's local directory assistance databases, and must do so at nondiscriminatory and reasonable rates. The Commission determined that LECs are not required to grant competing DA providers nondiscriminatory access to non-local directory assistance databases.

OMB Control No.: 3060–XXXX.

Title: Schools and Libraries Universal Service Support Mechanism—Notification of Equipment Transfers.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 600.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 600 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission addressed several matters related to the administration of the schools and libraries universal service mechanism (also known as the e-rate program). First, we adopt rules that will limit the ability of schools and libraries to engage in wasteful or fraudulent practices when obtaining internal connections. We also prohibit a school or library from transferring equipment purchased with universal service discounts, as part of eligible internal connections services, for a period of three years except in limited circumstances. These rules will advance the goals of the schools and libraries program by making support for internal connections regularly available to a larger number of applicants and by discouraging waste, fraud and abuse.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3731 Filed 2–19–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that, at 8:02 a.m. on Tuesday, February 13, 2004, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Ms. Julie Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Vice Chairman John M. Reich, Director Thomas J. Curry, and Chairman Donald E. Powell, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: February 17, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–341 Filed 2–19–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 4, 2004.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. John R. Barlow, Mound, Minnesota, and Cinda Mae Classon, Dows, Iowa; to retain 26.16 percent of the voting shares of Barlow Banking Corporation, Iowa Falls, Iowa, and thereby indirectly acquire voting shares of Iowa Falls State Bank, Iowa Falls, Iowa.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert D. Hanhardt, as trustee of the Hanhardt Family Trust; to acquire additional voting shares of NSB Bancshares, Inc., and thereby indirectly acquire additional voting shares of Nekoma State Bank, both of LaCrosse, Kansas.

Board of Governors of the Federal Reserve System, February 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–3665 Filed 2–19–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Gulf Atlantic Financial Group, Inc., Tallahassee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Tarpon Springs, Florida.

Board of Governors of the Federal Reserve System, February 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–3666 Filed 2–19–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure (NHII).

Time and Date: 9:30 a.m.–3:30 p.m., February 18, 2004.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 305A, Washington, DC 20201.

Status: Open.

Purpose: The Workgroup will meet to advise HHS staff who are planning the second annual conference on the National Health Information Infrastructure.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 260–2652, or Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 12, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–3659 Filed 2–19–04; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date: 9 a.m. to 5 p.m., March 3, 2004.

Place: Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005, (202) 232–7000.

Status: Open.

Purpose: The morning and afternoon sessions will focus on additional industry testimony on electronic claims attachments under HIPAA. The afternoon session will conclude with Subcommittee discussion of the issues presented and the substance of a possible letter to the Secretary.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–6333 or Marjorie S. Greenberg, Executive Secretary, Room 1100, Presidential Building, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 12, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy; Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–3660 Filed 2–19–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 04081]

Program To Build Capacity in Alaska Native Villages to Assess Impact of Releases From Formerly Used Defense Sites; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Program to Build Capacity in Alaska Native Villages to Assess Impact of Releases From Formerly Used Defense Sites was published in the **Federal Register**, Monday, February 2, 2004, Volume 69, Number 21, pages 4970–4973. The notice is amended as follows:

This program has been cancelled.

Note: The Director, Procurement and Grants Office, Centers for Disease Control and Prevention has been delegated the authority to sign ATSDR **Federal Register** notices pertaining to the availability of grant and cooperative agreement funds.

Dated: February 13, 2004.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3688 Filed 2–19–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–29]

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: Regional Centers for the Education and Training of Medical and Allied Health Students and Professions on Fetal Alcohol Syndrome and Other Prenatal Alcohol Related Disorders Health Practitioner Survey—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Diseases Control and Prevention (CDC).

Background

Maternal prenatal alcohol use is one of the leading, preventable causes of birth defects and developmental disabilities. Children exposed to alcohol during fetal development can suffer a wide array of disorders, from subtle changes in I.Q. and behaviors to profound mental retardation. The most severe result of drinking during pregnancy is Fetal Alcohol Syndrome (FAS). FAS is a condition that involves disorders of the brain, growth retardation, and facial malformations.

Physicians and other health practitioners play a vital role in diagnosing FAS and in screening women of child-bearing age for alcohol consumption and drinking during pregnancy. In Diekman's, *et al.* 2000, study of obstetricians and gynecologists, only one fifth of doctors surveyed reported abstinence to be the safest way to avoid the adverse outcomes associated with fetal alcohol exposure. Importantly 13% of doctors surveyed were unsure of about thresholds of alcohol consumption associated with adverse outcomes.

This survey will be used to gather information on the knowledge, attitudes and beliefs about FAS and alcohol consumption during pregnancy from members of professional practitioner organizations. Data will be collected from pediatricians, obstetricians and gynecologists, psychologists, psychiatrists, and family physicians and other allied health professionals. This information will be used to identify gaps in knowledge regarding the screening, diagnosis, and treatment of Fetal Alcohol Syndrome. The results of this survey will be used to develop model FAS curricula that will be disseminated among medical and allied health students and professionals. The FAS curricula will be used in a variety of formats including computer interactive learning applications, workshops, conferences, Continuing Medical Education (CME) credit courses, medical and allied health school clerkships. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
Pediatricians	1,000	1	30/60	500
Obstetricians/Gynecologists	1,000	1	30/60	500
Psychologists/Psychiatrists	1,000	1	30/60	500
Allied Health Professionals	1,000	1	30/60	500
Family Physicians	1,000	1	30/60	500
Total				2,500

Dated: February 11, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3683 Filed 2–19–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–28]

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: Active Surveillance of Ciguatera in Culebra, Puerto Rico—New—National Center for Environmental Health (NCEH), Centers for Diseases Control and Prevention (CDC).

Ciguatera fish poisoning (CFP) is a serious health threat to people in Puerto Rico. Many finfish that live in the island's coral reefs carry ciguatoxin. When people consume these finfish, they can get CFP, a condition that causes gastrointestinal and neurological symptoms. To quantify the health burden caused by CFP, the local department of health tallies the number of cases of CFP reported by health care providers on the island. A recent evaluation of this passive surveillance system determined that the majority of CFP cases that occur on the island are missed. To accurately quantify the health threat of CFP to the population in Puerto Rico, the National Center for Environmental Health, Centers for Disease Control and Prevention, in conjunction with the Puerto Rico Department of Health will conduct active surveillance for CFP for 12 months in Puerto Rico.

Our active surveillance system will quantify the public health burden of CFP by determining the incidence, risk factors, and economic effect of CFP in Culebra, Puerto Rico. Every 4 months for 1 year, we will administer a questionnaire to each of the 600 households in Culebra. The questionnaire elicits information on household fish consumption and identifies individuals who have developed symptoms of CFP. When we identify individuals having symptoms compatible with CFP, we will administer a second questionnaire. This second questionnaire explores personal risk factors, medical management, and costs incurred while the individuals were ill with CFP. To confirm the presence of ciguatoxin in affected areas, we will collect fish from local reefs, fish vendors, and any appropriate leftover fish from people with CFP. The fish will be analyzed by the U.S. Food and Drug Administration.

Ultimately, the information provided by this study will aid the Puerto Rico Department of Health in controlling the health threat of CFP. Quantifying the incidence, risk factors, and economic burden of CFP will guide the development preventive strategies. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Household survey	600	3	20/60	600
Individual survey	100	1	30/60	50
Total				650

Dated: February 11, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3684 Filed 2–19–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–26–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Epidemiologic Study Of Gastrointestinal Health Effects And Exposure To Disinfection Byproducts Associated With Consumption Of Conventionally Treated Groundwater—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

The primary goal of drinking water treatment is the removal of microorganisms responsible for waterborne disease. The addition of disinfectants such as chlorine is one of the most important steps in pathogen inactivation and may in some cases (such as in many groundwater systems) be the only treatment employed. However, chlorine also reacts with organic compounds in the water to produce halogenated organic byproducts (disinfection by-products [DBPs]). One of the most commonly measured groups of DBPs is the trihalomethanes (THMs). Human exposure to THMs has been associated with bladder and colorectal cancer. Public water providers must constantly balance the acute risks of gastrointestinal (GI) illness associated with exposure to microbial pathogens against the long-term risks associated with exposure to DBPs.

Each study household will be visited at the beginning and end of the study to enroll the study participants and to collect biological specimens (blood and serum samples will be collected from a subset (50 percent) of adult household members at the beginning and end of the study) and water samples. A questionnaire will be administered in the home at the beginning of the study to collect data about water use habits and possible exposures to microbial pathogens and THMs. All household members will be asked to provide a saliva specimen each month for the duration of the one-year study. Stool specimens will be collected during episodes of GI symptoms.

The specific aims of the study are to: (1) Determine the risk for GI illness associated with source water quality and treatment efficacy by comparing GI illness rates in people drinking highly treated bottled water with GI illness rates in people drinking bottled plant water; (2) determine the risk for GI illness associated with the distribution system by comparing GI illness rates in people drinking bottled plant water with GI illness rates in people drinking tap water; (3) determine water concentrations and associated blood concentrations of THMs in the study population; and (4) validate and refine existing models of THM exposure using the THM data collected at the participating households and hydraulic and water quality data collected in the distribution system at the time of household recruitment. The estimated annualized burden is 12,934 hours.

Respondents	Number of respondents	Number of responses/respondents	Average burden/respondent (in hrs.)
Telephone contact	12,000	1	10/60
Household enrollment interview	1,000	1	10/60
Individual enrollment interview	4,000	1	15/60
Water exposure interview	900	2	15/60
Biweekly health diary	4,000	26	2/60
Biweekly telephone interview	900	26	15/60

Dated: February 12, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3685 Filed 2–19–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Integrating Prevention Services for Persons with Bleeding and Clotting Disorders

Announcement Type: Competing Continuation-Initital.

Funding Opportunity Number: PA 04013.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: March 8, 2004.

Application Deadline: April 5, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Section 301(a) and 317(k)(2) and [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Purpose and Research Objectives: The purpose of the program is to (1) determine the efficacy of integrated multi-disciplinary care and prevention services for persons with hemophilia, other hereditary bleeding disorders including women with bleeding disorders, and thrombophilia to reduce morbidity and mortality associated with bleeding and clotting diseases; (2) assess unmet needs for service delivery and identify outreach strategies designed to improve access to care; (3) develop effective messages aimed at disease management and prevention; and (4) foster the development of training programs to enhance provider skills for the delivery of hemostasis and thrombosis care.

This program addresses the "Healthy People 2010" focus area(s) of access to quality health services, disability and secondary conditions, educational and community-based programs, and public health infrastructure.

Measurable outcomes of the program will be in alignment with the following performance goal for CDC: To improve the health and quality of life of Americans with disabilities.

Information learned from this program evaluation will have immediate benefit for the program and the patients with bleeding and clotting disorders receiving prevention services.

Activities: Recipient activities for this program are as follows:

1. Using the principles of the multi-disciplinary comprehensive care model utilized in hemophilia treatment center prevention programs, implement the model in a health care setting that features strong clinical, outreach, education, support and provider training programs for persons with hemophilia, other hereditary bleeding disorders including women with bleeding disorders, and thrombophilia.

Specifically:

- Identify unmet needs of target populations and establish outreach mechanisms to improve access to care for persons with bleeding and clotting disorders for the purpose of evaluating prevention interventions.
- Determine strategies that will address unmet needs, assess the efficacy of prevention activities and improve access to under-served populations such as women with bleeding disorders and individuals with thrombophilia.
- Conduct outreach efforts to increase prevention intervention awareness and availability of comprehensive care among the affected population and referring providers and establish referral patterns.

• Facilitate communication with other sub-specialties concerning awareness and prevention of the complications of bleeding and clotting disorders.

2. Develop and implement a plan that will provide clinical expertise for diagnosing underlying causes of coagulation disorders and provide management and prevention services. Experience with bleeding and clotting disorders should be a preferred requirement for clinical expertise.

• Collaborate with clinical programs designed to improve the treatment of bleeding and clotting disorders.

• Develop training programs to educate physicians and other providers in management of bleeding and clotting disorders.

3. Develop education and awareness programs for affected populations to increase knowledge and assist consumers in making informed decisions.

• Establish mechanisms for consumer input and education and assist in fostering locally-based consumer organizations to assist in care evaluation.

• Develop educational materials and distribute as needed.

• Develop methods (*i.e.* utilizing consumers) to assist with the delivery of prevention messages through peer-led prevention education, outreach, and support.

4. Evaluate the model for feasibility and effectiveness.

• Implement data collection and evaluation systems to document unmet needs for integrated diagnostic, management and prevention services for persons with hemophilia, other hereditary bleeding disorders including women with bleeding disorders, and thrombophilia in their clinics.

• Establish follow-up with patients to determine the impact of multi-disciplinary care management for persons with coagulation disorders.

5. Publish and disseminate program results.

CDC Responsibilities: In this cooperative agreement, the CDC Scientist within the Division of Hereditary Blood Disorders (DHBD) in the National Center on Birth Defects and Developmental Disabilities is an equal partner with scientific and programmatic involvement during the conduct of the project through technical assistance, advice, and coordination.

This Scientist will:

1. Participate in the development of common protocols.

2. Participate in the analysis, interpretation, and reporting of findings in the scientific literature and other media to the community at large and the public policy community within the Federal government.

3. Participate in data management, analysis of data, and interpretation and dissemination of findings.

4. Provide scientific consultation and technical assistance in the design and conduct of the project, including intervention models, outcome measures, and analytical approaches in participation with the recipient organizations.

CDC Scientific Program Administrator (SPA)

CDC will appoint an SPA, apart from the DHBD Scientist, who will:

1. Serve as the Program Official for the funded research institutions.

2. Carry out continuous review of all activities to ensure objectives are being met. As such, the SPA may attend Coordination Committee meetings for purposes of assessing overall progress and for program evaluation purposes.

3. Provide scientific consultation and technical assistance in the conduct of the funded projects as requested.

4. Conduct site visits to recipient institutions to determine the adequacy of the research and to monitor performance against approved project objectives.

Collaborative Responsibilities: The planning and implementation of the cooperative aspects of the study will be effected by a Coordination Committee consisting of the Principal Investigators from each participating institution and the DHBD Scientist. This Coordinating Committee will formulate a research plan for cooperative research that will incorporate recipient research plans into uniform and compatible study designs and data collection protocols. Such support will be designed to contribute to effective program outcomes through allocation of resources among the participating cooperative agreement entities.

At periodic coordination committee meetings, the group will: (1) Make recommendations on study protocols and data collection approaches; (2) discuss the target populations that have been or will be recruited; (3) identify and recommend solutions to unexpected study problems; and (4) discuss ways to efficiently coordinate and combine common study activities and best practices.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: Four.

Approximate Average Award: $250,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Ceiling of Award Range: $350,000 in initial budget period.

Anticipated Award Date: June 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants: Eligible applicants are limited to those already funded under Program Announcement 01085: Integrating Prevention Services for Persons with Bleeding and Clotting Disorders. This program was originally announcement in 2001 and was full and open competition. Funding was awarded to initiate the pilot program, however, in the first two years, only the data collection development phase was completed. Implementation and final approval from institutional review boards was in process at the end of the project period. The pilot process and these awardees have produced the background necessary for the projects to now demonstrate the effectiveness of comprehensive care models under development based on the foundations established by these institutional projects.

Therefore, the eligible applicants are:

Duke University, Durham, North Carolina

Hemophilia Foundation of Michigan, Ann Arbor, Michigan

Mountain States Regional Hemophilia and Thrombosis Center, Denver, Colorado

UMDNJ–Robert Wood Johnson University Hospital, New Brunswick, NJ.

III.2. Cost Sharing or Matching: Matching funds are not required for this program.

III.3. Other: If you request a funding amount greater than the ceiling of the award range, your application will be considered nonresponsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements. Based upon budget constraints, requests above this average

award level are suject to reduction in accordance with available resources.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from under-represented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1 Address to Request Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission: Letter of Intent (LOI):

The LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One-inch margins.
- Printed only on one side of page.
- Single spaced.
- Written in English; avoid jargon.

The LOI must contain the following information: Name, address, and telephone number of the proposed Principal Investigator, number and title of this program announcement, names of other key personnel, designations of collaborating institutions and entities, and an outline of the proposed work, recruitment approach, and expected outcomes.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at (770) 488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov*

Your research plan should address activities to be conducted over the entire project period. The application should include a separate typed abstract of the proposal consisting of no more than one single-spaced page. The application should include a table of contents for the project narrative and all related attachments. Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information may include curriculum and resumes for key project staff, organizational charts, letters of support, etc.; and should be limited to those items relevant to the requirements of this announcement.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times:

LOI Deadline Date: March 8, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and will allow CDC to plan the application review.

Application Deadline Date: April 5, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions: Restrictions, which must be taken into account while writing your budget are that project funds cannot be used to supplant other available applicant or collaborating agency funds for construction or for lease or purchase of facilities or space.

If you are requesting indirect costs in oyr budget, you must include a copy of your indirect cost rate agreement. If you indirect cost rate is a provisional rate, the agreement must be less than 12 months from the application due date.

IV.6. Other Submission Requirements:

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Sally Crudder, Health Scientist, CDC National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, MS. E–64, Atlanta, GA 30333, e-mail address: *scrudder@cdc.gov.*

Application Submission Address: Submit the original and five copies of your application by mail or express

delivery service to: Technical Information Management—PA 04013, Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted by fax or e-mail at this time.

V. Application Review Information

V.1. Criteria: You are required to provide measures of outcome and effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

Under the evaluation criteria noted below, applicants must describe how they will address the program components as they relate to the Purpose and Research Objectives, and Recipient Activities as cited in this Announcement.

Your application will be evaluated against the following criteria:

1. Methods and Activities: (30 points)

a. The extent that the applicant's plan explains how the program activities are to be conducted and the extent that prevention methods proposed are: (1) Appropriate to accomplish stated goals and objectives and (2) feasible within programmatic and fiscal restrictions.

b. The extent to which the applicant describes and documents the collaborative efforts of the proposed program to (1) Assess efficacy of prevention activities and (2) develop and implement prevention programs.

c. The extent that the applicant incorporates gathering and using input from persons with bleeding disorders and thrombophilia and their family members, and local consumer and community based organizations, and the applicant's willingness to cooperate with consumers in the development and implementation of prevention services.

d. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Capacity: (30 points)

a. The extent that the applicant provides multi-disciplinary, integrated, clinical and research-based prevention activities, outreach, education, support and provider training programs to persons with hemophilia, other hereditary bleeding disorders including women with bleeding disorders, and thrombophilia.

b. The extent that the applicant documents and explains the scope and magnitude of previous experiences in providing a comprehensive, prevention program for hemophilia, thrombophilia, and women's bleeding disorders including diagnosis, management, outreach, education, and data collection utilizing the multi-disciplinary, comprehensive care model. The extent to which these services are prevention-oriented.

c. The extent that the applicant demonstrates a collaborative relationship with well-established basic science and clinical research programs to provide the environment for broad based training and translation research.

3. Background and Need: (15 points)

The extent that the target populations and catchment area are described in terms of known morbidity, demographics, sources of care, and existing data collection and surveillance. The extent the applicant identifies unmet needs and how they can appropriately address the issues of the target communities.

4. Program Management and Evaluation: (15 points)

a. The extent of management experience for recruiting and implementing large public health prevention initiatives.

b. The extent that management systems, including types, frequency, and methods of evaluation are used to ensure appropriate implementation of program activities.

5. Goals and Objectives: (10 points)

The extent that the proposed goals and project objectives meet the required activities specified under "Recipient Activities"; and are specific, measurable, time-phased, and realistic.

6. Budget: (Not Scored)

This criteria includes the degree to which the budget is reasonable, clearly justified, accurate, and consistent with the purposes of this announcement. The budget justification will not be counted in the stated page limit.

7. Human Subjects: (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This criteria will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

V.2. Review and Selection Process: Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by NCBDDD. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

VI. Award Administration Information

VI.1. Award Notices: Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements: 45 CFR Parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr_table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirement for Inclusion of Women and Racial and Ethnic Minorities in Research

• AR–9 Paperwork Reduction Act Requirements

• AR–10 Smoke-Free Workplace Requirements

• AR–11 Healthy People 2010

• AR–12 Lobbying Restrictions

• AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements: You must provide CDC with an original, plus two copies of the following reports:

Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) on March 22 of each subsequent budget year. The progress report will serve as your non-competing continuation application, and must contain the following elements:

Current Budget Period Activities Objectives.

Current Budget Period Financial Progress.

New Budget Period Program Proposed Activity Objectives.

Budget.

Additional Requested Information.

Measures of Effectiveness.

Financial status report and annual report, no more than 90 days after the end of the budget period.

Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section (PGO–TIM), CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Sally Crudder, Health Scientist, CDC National Center on Birth Defects and Developmental Disabilities, 1600 Clifton Road, Mailstop E–64, Atlanta, GA 30333, E-mail Address: *scrudder@cdc.gov*, Telephone: 404–371–5270.

For financial, grants management, or budget assistance, contact: Rick Jaeger, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2727, E-mail: *rjaeger@cdc.gov.*

Dated: February 13, 2004.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3687 Filed 2–19–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–118]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Quality Improvement (formerly Peer Review) Organization Contracts: Solicitation of Statements of Interest from In-State Organizations, General Notice and Supporting Regulations in 42 CFR 475.102, 475.103, 475.104, 475.105 and 475.106; *Form No.:* CMS–R–118 (OMB# 0938–0526); *Use:* This notice is a solicitation of sources for the procurement of medical review services. The information is required for potential contractors to demonstrate that they meet the statutory requirements as Peer Review Organizations (also known as Quality Improvement Organizations). Compliance with these requirements is voluntary; *Frequency:* Other: As needed, not recurring; *Affected Public:* Business or other for-profit; *Number of Respondents:* 53; *Total Annual Responses:* 53; *Total Annual Hours:* 1. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 12, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–3662 Filed 2–19–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements, Etc.: Environmental Regulatory Enhancement Program

Program Office Name: Administration for Native Americans (ANA).

Funding Opportunity Title: Environmental Regulatory Enhancement.

Announcement Type: Competitive Grant—Initial.

Funding Opportunity Number: HHS–2004–ACF–ANA–NR–0002.

CFDA Number: 93.581.

Due Date for Application: March 31, 2004, 4:30 P.M. (EST).

Summary: The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2004 funds for the Environmental Regulatory Enhancement (Environmental) Program. Financial assistance is provided utilizing the competitive process in accordance with the Native Americans Programs Act of

1974, as amended. The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

I. Funding Opportunity Description

The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2004 funds for new community-based projects under the competitive area: Environmental Regulatory Enhancement. This announcement contains information on financial assistance from the Environmental Regulatory Enhancement Program, authorized under Section 803(d) of the Native American Programs Act of 1974 (Act), 42 U.S.C. 2991b. Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, the lack of resources has resulted in a delay in action on the part of the tribes.

In 1990, Congress added Section 803(d) to the Native American Programs Act of 1974 to address critical issues identified by tribes before congressional committees, some of which included: The need for assistance to train professional staff to monitor and enforce tribal environmental programs; the lack of adequate data for tribes to develop environmental statutes and establish quality environmental standards; and the lack of resources to conduct studies to identify sources of pollution and determine the impact on existing environmental quality.

The Native American Programs Act of 1974 was amended to strengthen tribal governments through building capacity in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

In this announcement, ANA encourages Native American tribes and organizational leaders to propose, coordinate and implement community-based projects and services that meet the needs of its community members and create options and opportunities for future generations.

This program announcement emphasizes community-based partnerships and projects. This emphasis will increase the number of grants to local community organizations and expand the number of partnerships among locally based non-profit organizations. ANA will accept applications for funding and award grants to multiple organizations located in the same geographic area, provided the activities are not duplicative of previously funded ANA projects in the same geographic area or to the same grantee. Previously, under each competitive program area, ANA accepted one application that served or impacted a reservation, Tribe or Native American community. The reason for this change is to expand and support large Native American rural and urban communities that provide a variety of services in the same geographic area. Although Tribes are limited to three simultaneous ANA grants (one each under SEDS, Language and Environmental programs) at any one time, this clarification allows other community-based organizations to apply for ANA funding to support on-going community-based efforts, provided the activities do not duplicate currently funded projects serving the same geographic area.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

ANA Administrative Policies: Applicants must comply with the following Administrative Policies:

- An applicant must provide a 20% non-federal match of the approved project costs.
- An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body.
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit agency can accomplish this by providing: (i) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or (ii) a copy of the currently valid IRS tax exemption certificate; or (iii) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or (iv) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (v) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility.
- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that it's duly elected or appointed board of directors is representative of the community to be served. To establish compliance, an applicant should provide supporting documentation and assurance that its duly elected or appointed board of directors is majority Native American.
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.
- Proposed projects must consider the maximum use of all available community-based resources.
- Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community.
- Applicants proposing an Economic Development project should address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow, and approach for the implementation and marketing of the business.
- ANA will not accept applications from tribal components, which are tribally authorized divisions of a larger tribe, which are not approved by the governing body of the tribe.
- An applicant can have only one active Environmental grant operating at any given time.
- ANA funds short-term projects not programs. Proposed projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be completed, or self-sustaining, or supported by other than ANA funding at the end of the project period.

Definitions: Program specific terms and concepts are defined and should be used as a guide in writing and submitting the proposed project. The funding for allowable projects in this program announcement is based on the following definitions:

Authorized Representative: The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies.

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information should be provided: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe.

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community. The applicant should document the community's support of the proposed project. Applications from National and Regional Indian and Native organizations should clearly demonstrate a need for the project, explain how the project originated, identify the beneficiaries, and describe and relate the actual project benefits to the community and organization. National Indian and Native organizations should also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities.

Completed Project: A project funded by ANA is finished, or self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period.

Consortia—Tribe / Village: A group of Tribes or villages that join together either for long-term purposes or for the purpose of an ANA project. Applicant must identify consortia membership. The consortia applicant must be the recipient of the funds. A consortia applicant must be an "eligible entity" as defined by this Program Announcement and the ANA regulations. Consortia applicants should include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortia members supporting the ANA application. An application from a consortium should have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member Tribes also receive funding from ANA. The consortium application should identify the role and responsibility of each participating consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

Construction: The initial building of a facility.

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes that are unrelated to the actual management or implementation of the ANA project. However, salaries and activities that are clearly related to the ANA project are eligible for grant funding.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural capacities necessary for a sustainable local community. Economic development includes activities and actions that develop sustainable, stable, and diversified private sector local economies. For example, initiatives that support employment options, business opportunities, development and formation of a community's economic infrastructure, laws and policies that result in the creation of businesses and employment options and opportunities that provide for the foundation of healthy communities and strong families.

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Governance: Involves assistance to tribal and Alaska Native village government leaders to increase their ability to execute local control and decision-making over their resources.

Implementation Plan: The guidebook the applicant will use in meeting the results and benefits expected for the project. The Implementation Plan provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed by the Objective Work Plan.

In-kind Contributions: In-kind contributions are property or services which benefit a federally assisted project or program and which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR Part 74 and Part 92.

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. For example, a notice of award from another Federal agency committing $200,000 in construction funding to complement a proposed ANA funded pre-construction activity is evidence of a commitment. Statements about resources which have been committed to support a proposed project made in the application without supporting documentation will be disregarded.

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a written letter of commitment from an organization that agrees to provide a supportive action, product, and service, human or financial

contribution that will add to the potential success of the project.

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training.

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three year period. Prior to funding the second or third year, a multi-year grant, ANA will require verification and support documentation from the grantee that objectives and outcomes proposed in the preceding year were accomplished and the non-federal match requirement was met. Applicants proposing multi-year projects must complete and submit an Objective Work Plan (OWP) and budget with narrative for each project year, and fully describe objectives to be accomplished, outcomes to be achieved, and the results and benefits to determine the successful outcomes of each budget period. ANA will review the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable, outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals.

Partnerships: Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, Tribes, Federal and State agencies and private or non-profit organizations, which may include faith-based organizations.

Performance Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be measurable to determine that the project has achieved its desired objective and can be independently verified through monitoring and evaluation.

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Renovation or Alteration: The work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction.

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution should indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable).

Sustainable Project: A sustainable project is an on-going program or service that can be maintained without additional ANA funds.

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well-being, and culture of the people that reside and work in the community.

Social Development: Investment in human and social capital for advancing the well-being members of the Native American community served. Social development is the action taken to support the health, education, culture, and employment options that expand an individual's capabilities and opportunities, and that promote social inclusion and combat social ills.

Program Area: Environmental Regulatory Enhancement

The strengthening of tribal governments or organizations through capacity building in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture for Native American communities.

Program Areas of Interest include:

- Projects to develop regulations, ordinances and laws to protect the environment;
- Projects to develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions to meet Tribal and Federal regulatory requirements;
- Projects that promote environmental training and education of tribal employees;
- Projects that develop technical and program capability to monitor compliance and enforcement of Tribal and Federal environmental regulations, ordinances, and laws.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Area Funding: $3,000,000.

Anticipated Number of Awards: 20–30.

Average Projected Award Amount: $50,000 to $250,000.

Length of Project Periods: 12, 17, 24, or 36 months.

Ceiling on Amount of Individual Awards: $250,000 (for planning purposes).

Floor of Individual Award Amounts: $50,000.

III. Eligibility Information

1. Eligible Applicants

- Federally Recognized Indian Tribes;
- Incorporated non-Federally and State recognized Indian Tribes;
- Alaska Native Villages, as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or non-profit village consortia;
- Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Other Tribal or village organizations or consortia of Indian Tribes; and
- Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

Additional Information on Eligibility: Please refer to section I "Funding Opportunity Description" to review general ANA Administrative Policies for any applicable statutory policies pertaining to application eligibility.

Proof of Non-Profit Status: Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or
- A copy of the currently valid IRS tax exemption certificate; or
- A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable).

2. Cost Sharing or Matching

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must provide a match of at least $25,000 ($100,000 / 80% = $125,000 − $100,000 = $25,000) or 20% total approved project cost. Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match. Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) (3) of the Native American Program regulations.

3. Other (if applicable)

DUNS Number: On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants after giving notice in the **Federal Register** on June 27, 2002 and opportunity for public comment. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.Gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under mandatory grant programs, submitted on or after October 1, 2003. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

The ANA regional Training and Technical Assistance providers at:

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, W.VA
Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, Virginia 22101. Toll Free: 888–221–9686, (703) 821.2226 x–234, Fax: (703) 821.3680. Kendra King-Bowes, Project Manager, E-Mail: *kking@namsinc.org, www.anaeastern.org.*

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY
ACKCO, Inc., 2214 N. Central, Suite 250, Phoenix, Arizona 85004. Toll Free: 800–525.2859, (602) 253.9211, Fax (602) 253.9135. Theron Wauneka, Project Manager, Email: *theron.wauneka@ackco.com, www.anawestern.com.*

Region III: Alaska
Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577. Toll Free 877–770–6230, (907) 694.5711, Fax (907) 694.5775. P.J. Bell, Project Manager, E-Mail: *pjbell@gci.net, www.anaalaska.org.*

2. Content and Form of Application Submission

Please refer to section I "Funding Opportunity Description" to review general ANA Administrative Policies for any applicable statutory policies pertaining to application content and form.

Application Submission: An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcements consists of Three Parts. Part One includes the SF 424, other required government forms, and other required documentation. Part Two of the application is a description of the project's substance. This section of the application may not exceed 45 pages. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from *Grants.gov.* While electronic submission of applications may be available in the next fiscal year for this program, no

electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the charts below. The application should begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format may reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: This format applies to all applicants submitting applications for funding. ANA will now require all applications to be labeled with a Section Heading in compliance with the format provided in the program announcement. All pages submitted (including Government Forms, certifications and assurances) should be numbered consecutively. The paper size shall be 8½ x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. The font size should be no smaller than 12-point and the font type shall be Times New Roman. These requirements do not apply to the project Abstract Form, Letters of Commitment, the Table of Contents, and the Objective Work Plan.

Forms and Assurances: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *www.acf.hhs.gov/programs/ofs/forms.htm*. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

Survey: Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *www.acf.hhs.gov/programs/ofs/forms.htm*. (OMB No. 1890–0014 Exp. 1/31/06).

3. Submission Date and Time

The closing time and date for receipt of applications is 4:30 (Eastern Standard Time) on March 31, 2004. Mailed or hand-delivered applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. This address must appear on the envelope/package containing the application with the note "Attention: Lois B. Hodge." Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Hand-delivered applications must be received at the address below by 4:30 p.m. (Eastern Standard Time) on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding Federal holidays). Applications may be delivered to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024. This address must appear on the envelope/package containing the application with the note "Attention: Lois B. Hodge." Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late Applications: Applications that do not meet the Deadline criteria above will be considered late applications. ACF shall notify each late applicant that its application will not be considered for review in the current competition.

Extension of Deadline: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rests with the Grants Management Officer.

Required Forms: All requirements for submission are due on or before the deadline date.

PART ONE—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

Part One must include the following	Content and location of Part One required forms, certifications, and documents
SF 424, SF 424 A, and SF 424B	*http://www.acf.hhs.gov/programs/ofs/forms.htm*
Table of Contents	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.
Project Abstract	ANA Form: OMB Clearance Number 0980–0204 *http://www.acf.hhs.gov/programs/ana.*
Proof of Non-Profit Status	As described in this announcement under Section B—Award Information, subpart heading "Acceptable proof of Non-profit status."
Resolution	Information for submission can be found in the Program Announcement Section, "Content and Form of Application Submission."

PART ONE—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS—Continued

Part One must include the following	Content and location of Part One required forms, certifications, and documents
Documentation that the Board of Directors is majority Native American, if applicant is other than a Tribe or Alaska Native Village government.	As described in this announcement under "ANA Administrative Policies" section.
Audit Letter	A Certified Public Accountant's "Independent Auditors' Report on Financial Statement." This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $300,000 or more of Federal funds). Applicant must also include that portion of the audit document that identifies all other Federal sources of funding,
Indirect Cost Agreement	Organizations and Tribes must submit a current indirect cost agreement (if claiming indirect costs) that aligns with the approved ANA project period. The Indirect Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.
Non-Federal Share of Waiver Request, per 45 CFR 1336.50(b)	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program regulations (if applicable).
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	May be found at *www.acf.hhs.gov/programs/ofs/forms.htm.*
Certification regarding Maintenance of Effort	May be found at *www.acf.hhs.gov/programs/ofs/forms.htm*
Environmental Tobacco Smoke Certification	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

PART TWO—APPLICATION REVIEW CRITERIA

Part two—proposed project	Application review criteria—this section may not exceed 45 pages
Criteria One (5 pts)	Introduction and Project Summary/Project Abstract.
Criteria Two (20 pts)	Objectives and Need for Assistance.
Criteria Three (25 pts)	Approach: Include an Objective Work Plan (OWP) Form for each 12 months of the project period. Only one OWP is needed to reflect a 17-month project period.
Criteria Four (20 pts)	Organizational Capacity.
Criteria Five (20 pts)	Results or Benefits Expected.
Criteria Six (10 pts)	Budget and Budget Justification Summary/Cost Effectiveness.

PART THREE—APPENDIX

	Appendix
Part Three—Documentation	This section may not exceed 20 pages. Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers, or be returned to the applicant.

Additional Forms: Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

Applications are not subject to Executive Order 12372.

5. Funding Restrictions

ANA does not fund:

- Activities in support of litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination

will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR part 1336, Subpart C, but before funding decisions are complete.

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because those activities are not authorized by the Native American Programs Act of 1974, as amended.
- Objectives or activities to support core administration activities of an organization. However, functions and activities that are clearly project related are eligible for grant funding (Please refer to the definition for "core administration activities" under Definitions within section I on Funding Opportunity Description, and the section on indirect costs under section V.1 Application Review Information, Criteria).
- Costs associated with fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award. However, any unallowable costs for purposes of computing charges to Federal awards must be treated as direct costs for purpose of determining indirect cost rates, and be allocated their share of the organization's indirect costs if they represent activities that (a) include the salaries of personnel, (b) occupy space, and (c) benefit from the organization's indirect costs.
- Major renovation or alteration because those activities are not authorized under the Native American Programs Act of 1974, as amended.
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village.
- Project activities that do not further the three interrelated ANA goals of economic development or social development or governance, or meet the purpose of this program announcement.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide a complete original and two copies of the application with all required forms and signed by the authorized representative. The Application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications should be mailed to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, "Attention: Lois B. Hodge", 370 L'Enfant Promenade, SW., Washington, DC 20447.

For Hand-Delivery: An Applicant must deliver a complete original and two copies of the application with all required forms and signed by the authorized representative. Applications shall be considered as meeting an announced deadline if received on or before the deadline date, between the hours of 8 a.m. to 4:30 p.m., EST, Monday through Friday (excluding Federal holidays). Applications may be delivered to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC, 20024. This address must appear on the envelope/package containing the application with the note "Attention: Lois B. Hodge". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

V. Application Review Information

1. Criteria

Instructions: ACF Uniform Project Description (UPD)

The UPD text should be used as a general guidance in the development of projects. However, the program specific ANA application submission format to be used in response to this announcement is located in Section IV "Application and Submission Information".

Purpose: The Project Description is a major area by which an application is evaluated and ranked in competition with other applications for financial assistance. The Project Description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included if they present information clearly and succinctly. In preparing your Project Description, all information requested through each specific evaluation criteria should be provided. ANA uses this and other information to make funding decisions. It is important, therefore, that this information be included in the application.

General Instructions: ANA is particularly interested in specific factual information and statements of measurable goals and performance indicators in quantitative terms. Project descriptions are evaluated on a basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information that does not directly pertain to an integral part of the grant-funded activity should be placed in the appendix. The application narrative should be in a 12-pitch font. A table of contents and an executive summary should be included. Each page should be numbered sequentially, including attachments or appendices. Please do not include books, videotapes or published reports because they are not easily reproduced, are inaccessible to the reviewers, and will not be returned to the applicant.

Introduction: Applicants are required to submit a full Project Description and shall prepare this portion of the grant application in accordance with the following instructions and the specified evaluation criteria. The introduction provides a broad overview of the Project, and the information provided under each evaluation criteria expands and clarifies the project program-specific activities and information that reviewers will need to assess the proposed project.

Project Summary: Provide a summary of the Project Description (a page or less) with reference to the funding request.

Objectives and Need for Assistance: Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the Project Description, the applicant should provide information on the total range of projects currently being conducted and supported (or to be initiated) to ensure they are within the scope of the program announcement.

Results or Benefits Expected: Identify the results and benefits to be derived by the community and its members. For example, applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how

performance indicators under economic and social development and governance projects can be monitored, evaluated and verified.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, extraordinary social and community involvement or ease of project replication by other tribes and Native organizations. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people served and the number of activities accomplished. Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number elders participating in the activity during that reporting period. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the dates and schedule of accomplishments. List organizations, cooperating entities, consultants, or other key individuals who will work on the project, as well as a short description of the nature of their effort or contribution.

Organizational Profiles: Provide information on the applicant organization(s) and cooperating partners with organizational charts, financial statements, audit reports or statements from CPA/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Third-Party Agreements: Include written agreements between grantees and sub grantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification: Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allow-ability of the proposed costs.

Additional Information: The following are requests for additional information that need to be included in the application: Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit organization shall submit one of the following: (i) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or (ii) a copy of the currently valid IRS tax exemption certificate; or (iii) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or (iv) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (v) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA program eligibility.

General: The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s); and last column, total budget. The budget justification should be a narrative.

- Personnel: The description of the costs of employee salaries and wages. Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), or time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.
- Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.
- Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.
- Equipment: Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost, which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.) Justification: For each type of equipment requested, provide a description of the equipment, the cost

per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy, which includes the equipment definition.

• Supplies: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

• Contractual: Costs of all contracts for services and goods except for those, which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition (sole source) and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients may be required to make available to ANA pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

• Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs. Justification: Provide computations, a narrative description, and a justification for each cost under this category.

• Indirect Charges: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of the Interior, Department of Labor, the Department of Health and Human Services (HHS), or other Federal agency. Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

• Program Income: The estimated amount of income, if any, expected to be generated from this project. Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.

• Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each budget period.

• Total Direct Charges, Total Indirect Charges, and Total Project Costs.

Evaluation Criteria: ANA

Approach (25 Points): The Applicant's narrative should be clear and concise. The applicant should provide a detailed project description with goals and objectives. It should discuss the project strategy and implementation plan over the project period. Applicant should also describe the project strategy using the Objective Work Plan (OWP). In the OWP, the applicant should identify the project objectives, time frames, proposed activities, outcomes, and evaluation activity, as well as the individuals responsible for completing the objectives and performing the activities. Applicant should summarize how the project description, objective(s), approach, strategy and implementation plan are inter-related. The applicant should also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project. The Applicant should discuss "Leveraged Resources" (see Definitions) used to strengthen and broaden the impact of the proposed project. The Applicant should discuss how commitments and contributions from other entities will enhance the project. Applicant should provide "Letters of Commitment" (see Definitions) that identify the time, dollar amount, and activity to be accomplished through partnerships. Applicant should discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds. (Letters of Commitment are included in the Appendix).

Objectives and Need for Assistance (20 Points): Applicant should show a clear relationship between the proposed project, the social and economic development strategy, and the community's long-range goals. The need for assistance should clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (see Definitions) to be affected by the project and the community involvement in the project. The Applicant should describe the community's long-range goals, the community planning process, and how the project supports these community goals. The applicant should describe how the proposed goals, objectives, and activities reflect either the economic and social development or governance needs of the local community. Discuss the geographic location of the project and where the project and grant will be administered.

Applications from National American Indian and Native American organizations must clearly demonstrate a need for the project, explain how the project originated, and identify intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based program delivery strategy. National Indian and Native organizations should describe their membership and define how the organization operates, and demonstrates native community and/or Tribal government support for the project. The type of community served will

determine the type of documentation necessary. Proposed project objectives support the identified need and should be measurable.

Organizational Profile (20 Points): Provide information on the management structure of the Applicant and the organizational relationships with its cooperating partners. Include organizational charts that indicate how the proposed project will fit into the existing structure. Demonstrate experience in the program area. Describe the Applicant's capabilities such as the administrative structure, its ability to administer a project of the proposed scope and its capacity to fulfill the implementation plan. If relevant to the project, applicants must provide a Business Plan or any Third-Party Agreements (not counted in Appendix page limit). Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds. Applicants should list all current sources of federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues should be addressed. Applicant should provide "staffing and position data" to include a proposed staffing pattern for the project where the Applicant highlights the new project and staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant. Applicant should provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff (Full position descriptions are required to be submitted and included in the Appendix). Applicant should explain and discuss how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals should be included.

Results or Benefits Expected (20 Points): In this section the applicant should discuss the "Performance Indicators" (see Definitions) and the benefits expected as a result of this project. Performance indicators identify qualitative and quantitative data directly associated with the project. Each applicant should submit five indicators to support the applicant's project. Three performance indicators should be selected from the list of six below. Each grantee is required to develop two additional indicators specific to the project that directly support the goals and objectives. For each performance indicator selected the applicant should discuss the relevance of the data, the method for collecting the data, and the evaluation process. Performance indicators will be reported to ANA in the grantee's quarterly report. Three of the five Performance indicators required, should be selected from the following list: (1) The number of jobs created; (2) the number of workshops/trainings provided; (3) the number of people to successfully complete a workshop/training; (4) the number of community-based small businesses established or expanded; (5) identification of tribal or village government business, industry, energy or financial codes or ordinances that were adopted or enacted; and (6) the number of children, youth, families, or elders, assisted or participating. In this section the applicant will describe how it will measure the success of the separate project components and the project as a whole. Applicant should describe how the success of the project would be evaluated and verified by an independent program monitoring and evaluation team. Applicant should provide a narrative on the specific performance indicators that can be analyzed, measured, monitored, and evaluated. For example, if requesting funds for a conference, workshop, or an educational activity, the applicant should discuss the value and long-term impact to the participants and the community and explain how the information relates to the project goals, objectives and outcomes. The applicant should discuss how the project will be completed, or self-sustaining, or supported by other than ANA fund at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period. Project outcomes support the identified need and should be measurable.

Budget and Budget Justification/Cost Effectiveness: (10 Points): Budget and Budget Justification: An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and citing source(s) of funding. The applicant should provide a detailed line item Federal and Non-federal share budget by year for each year of project funds requested. A budget narrative describing the line item budget should be attached for each year of project funds requested. The budget should include a line item justification for each Object Class Category listed under Section B—"Budget Categories" of the "Budget Information-Non Construction Programs on the SF 424A form." The budget should include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

Applicant should briefly explain its existing operational budget and any additional anticipated funding (including unique financial circumstances, with potential impact on the project such as upcoming monetary or land settlements), and how the proposed project fits in the overall budget. Applicant should explain why it cannot apply other funding resources to cover the ANA portion of funding.

The non-federal budget share should identify the source and be supported by letters of commitment (see Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters. They do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Rate Agreement should be included in the application, with all cost broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement, may not be able to claim the allowable cost, may have the grant award amount reduced, or result in a delay in grant award.

Applicants are encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one ANA post-award grant

training and technical assistance workshop. This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards and will be negotiated prior to award. Applicants may also include costs to travel to an ANA grantee conference.

For business development projects, the proposal should demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period. If a profit-making venture is being proposed, profits should be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue should be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income. (*See* 45 CFR part 74 and part 92).

Cost Effectiveness: This criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving environmentally sound and healthy Native American communities. Applicant demonstrates an effective cost-benefit relationship for the proposed project by: Explaining partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes; and presenting a project that is completed, or self-sustaining or supported by other than ANA funds by the end of the project period.

Introduction and Project Summary/ Project Abstract (5 Points): Using the ANA Project Abstract form, the applicant should provide a Project Introduction. The Introduction will provide the reader an overview and some details of the proposed project. This is where the project is introduced to the peer review panel. Identify the name of the applicant, location of the community to be served by the proposed project, the project activities, amount requested, amount of matching funds to be provided, the length of time required to accomplish the project, and the outcomes or outputs to be achieved.

2. Review and Selection Process

Initial Screening: Each application submitted under this program announcement will undergo a pre-review screening to determine if (a) the application was received by the program announcement closing date; (b) the application was submitted in accordance with Section IV, "Application and Submission Information"; (c) the applicant is eligible for funding in accordance with Section III "Eligibility Information" of this program announcement; (d) the applicant has submitted the proper support documentation such as proof of non-profit status, resolutions, and required government forms; and (e) an authorized representative has signed the application; and (f) applicant has a DUNS number. An application that fails to meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants, with incomplete applications, will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. If pertinent, the notification will present the application weaknesses identified during the review process. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the evaluation criteria specified. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria will standardize the review of each application and distribute the number of points more equitably. Applications will be evaluated in accordance with the Program Announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of federal funds.

Application Review Criteria: ANA has expanded the review criteria to allow for a more equitable distribution of points during the application review and competition process. The use of these six criteria distributes the number of points more equitably. Based on the ACF Uniform Project Description, ANA's criteria categories are Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Narrative.

As non-Federal reviewers will be used, applicants have the option of omitting from the application copies (not original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and comments; analysis by ANA staff and review of previous ANA grantee past performance (includes timely reporting and successful grant close-out); comments from State and Federal agencies having contract and grant performance related information; and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth

in 45 CFR 1336, Subpart C, but before funding decisions are complete.

VI. Award Administration Information

1. Award Notice

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicants Authorizing Official.

2. Administrative and National Policy Requirements

45 CFR part 74, 45 CFR part 92, 45 CFR part 1336, subpart C, and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 3/31/04. 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 Survey on Ensuring Equal Opportunity for Applicants form is approved under OMB control number 1890–0014 which expires 1/31/06.

3. Reporting Requirements

Programmatic Reports: Quarterly.

Financial Reports: Quarterly.

Special Reporting Requirements: An original and two copies of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final report shall be due 90 days after the end of the project period.

VII. Agency Contacts

Program Office Contact: ANA Applicant Help Desk, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor-West, Washington, DC 20447–0002. Telephone: (202) 690–7776 or toll-free at 1–977–922–9262. Email: ana@acf.dhhs.gov.

Grants Management Office Contact: Lois B. Hodge, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor-West, Washington, DC 20447–0002. Telephone: (202) 401–2344. Email: Lhodge@acf.dhhs.gov.

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants should check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. Due to the new application and program additions and modifications, ANA strongly encourages all prospective applicants to participate in free pre-application training.

Dated: January 21, 2004.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 04–3653 Filed 2–19–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Evaluation of User Satisfaction With NIH Internet Sites

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the 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. The proposed information collection was previously published in the **Federal Register** on October 28, 2003, in Volume 68, No. 208, pages 61452–61453, 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 NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Evaluation of User Satisfaction with NIH Internet Sites.

Type of Information Collection Request: New.

Need and Use of Information Collection: Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct customer satisfaction surveys. Since the late 1980's, the NIH has seized the opportunity to disseminate information and materials via the Internet. Today, rapid technological changes of the WWW warrant on-going constituent and resource analysis. With survey information, the NIH is enabled to serve, and respond to, the ever-changing demand by the public. The 'public' includes individuals (such as patients, educators, students, *etc.*) and interested communities (such as national or local organizations/institutions) and business. Survey information will augment current Web content, delivery, and design research that is used to understand the Web user, and more specifically, the NIH user community. Primary objectives are to: (1) Classify NIH Internet users; (2) summarize and better understand customer needs; and (3) quantify the effectiveness/efficiency of current tools and delivery. Overall, the Institutes, Centers, and Offices of the NIH will use the survey results to identify strengths and weaknesses in current Internet strategies. Findings will help to (1) understand user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) realize how to align Web offerings with identified user need(s); and (4) explore methods to offer and deliver information with efficacy and equity. *Frequency of Response:* On occasion [As needed on an on-going and potentially concurrent basis (by Institute, Center, or Office)]. *Affected Public:* Users of the Internet. Primarily, this is an individual at their place(s) of access including, but not limited to, home or/and work environments. *Type of Respondents:* Public users of the NIH Internet site, www.nih.gov, which may include organizations, medical researchers, physicians and other health

care providers, librarians, students, as well as individuals of the general public. *Estimated Number of Respondents:* 104,000. *Number of Respondents Per Respondent:* 1. *Average Burden Hours Per Response:* 0.084. *Burden Hours Requested:* 8684. Total annualized cost to respondents is estimated at $130,260. There are also no capital costs, operating costs and/or maintenance costs to report.

SURVEY TITLE: WEB CUSTOMER SATISFACTION SURVEY, ANNUAL REPORTING BURDEN*

[Web-based; Required for Federal Register requests under PRA, Paperwork Reduction Act.]

Survey area	Number of respondents	Frequency of response	Avg. burden per response (hours)	Burden hours
NIH Organization-wide (1 entity)	4,000			334
Overall customer satisfaction	2,000	1	0.1002	200
Specific indicator: Top-level/Entry pages	1,000	1	0.0668	67
Specific indicator: Tools and initiatives	1,000	1	0.0668	67
Individual Institute/Office	100,000			8,350
Overall customer satisfaction	50,000	1	0.1002	5,010
Specific indicator: Top-level/Entry pages	25,000	1	0.0668	1,670
Specific indicator: Tools and initiatives	25,000	1	0.0668	1,670
Total	104,000		0.084	8,684

Request 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 function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact:

Dennis Rodrigues, NIH Office of Communications and Public Liaison, 9000 Rockville Pike, Bldg. 31, Rm. 2B03, Bethesda, Maryland 20892–2094, or call non toll-free at (301) 435–2932. You may also e-mail your request to *dr3p@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 5, 2004.

John Burklow,

Associate Director for Communications, Office of the Director, National Institutes of Health.

[FR Doc. 04–3713 Filed 2–19–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Strand-Specific Amplification

Vinay K. Pathak, David C. Thomas (NCI)

DHHS Reference No. E–018–2004/0–US–01 filed 04 Dec 2003

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

Replication of genetic material for all organisms involves synthesis of different strands of nucleic acid. In addition, replication of these strands requires the coordinated effort of several proteins and as such, are potential targets for drug therapy. In HIV infection, the potential for drug therapy targeted to specific steps in viral replication is advantageous as it might enable the therapeutic intervention to be more efficient and specific to the viral replication.

This technology enables the researcher to evaluate the effects novel therapies and therapeutic protocols have on viral replication by assessing the impact of therapy on specific steps in viral replication. The technology involves using padlock probes that attached at the 5' and 3' ends and ligate together forming a circle. The circle is then amplified using the rolling amplification technique. The amplified circles can be detected and quantitated using real-time PCR for assessment.

The technology can be used in the development of test kits for prognostics and therapeutic evaluation as well as assessing the effects and efficacy of new and novel therapeutics for HIV infection.

A Novel Approach to Genome-Wide Identification of Gene Regulatory Sequences

Gregory E. Crawford (NHGRI).
U.S. Provisional Application 60/511,905 filed 15 Oct 2003 (DHHS Reference No. E–286–2003/0–US–01)
Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov*

Sequence analysis of the human genome has identified approximately 30,000 protein-coding genes, but little is known about how most of these genes are regulated. A major goal of current genome research is to identify the location of all cis-acting gene regulatory elements for all genes. This will be necessary if we are to understand global gene regulation in different tissues as well as identify regulatory variants that make individuals more susceptible to common diseases.

The present invention relates to methods of studying gene regulatory elements on a genome-wide scale. Particularly, it relates to methods of generating libraries of DNAse hypersensitive genomic sequences, which are believed to correlate well with the locations of gene regulatory elements. These methods involve obtaining nuclei from the cell sample, subjecting the nuclei to DNAse I digestion, and embedding the DNAsed sample in low melt agarose to substantially prevent non-specific shearing of the genomic DNA. The DNAsed fragments are then blunted and further processed, to permit isolation and analysis of the putative regulatory elements.

Retrovirus-Like Particles and Retroviral Vaccines

David E. Ott (NCI)
PCT Application filed 27 Oct 2003 (DHHS Reference No. E–236–2003/0–PCT–01)
Licensing Contact: Susan Ano; (301) 435–5515; *anos@mail.nih.gov*

This technology describes retrovirus-like particles and their production from retroviral constructs in which the gene encoding all but seven amino acids of the nucleocapsid (NC) protein was deleted. This deletion functionally eliminates packaging of the genomic RNA, thus resulting in non-infectious retrovirus-like particles. These particles can be used in vaccines or immunogenic compositions. Specific examples using HIV–1 constructs are given. Furthermore, efficient formation of these particles requires inhibition of the protease enzymatic activity, either by mutation to the protease gene in the construct or by protease inhibitor thereby ensuring the production of non-infectious retrovirus-like particles. This technology is further described in Ott *et al.*, Journal of Virology, 2003, 77(5), 5547.

Aerosolized Capreomycin for Inhibition of Pulmonary Tuberculosis

Carl N. Kraus, Clifton E. Barry III, Bernard Doan (NIAID)
U.S. Provisional Application No. 60/500,001 filed 11 Sep 2002 (DHHS Reference No. E–286–2002/0–US–01).
Licensing Contact: Michael Ambrose; (301) 594–6565; *ambrosem@mail.nih.gov.*

This technology involves the methods of reformulation of Capreomycin for the aerosol treatment of pulmonary tuberculosis.

Tuberculosis is a devastating lung disease that is highly infectious and easily transmitted, especially in areas of overcrowding such as prisons. Furthermore, underdeveloped countries with large populations living in close quarters maintain an endemic disease reservoir limiting the health and economic viability of the population. The WHO estimates that as many as ⅓ of the population may be infected. Current treatment requires the patient to take medication over an extended period of time, up to 12 months or more in some cases. This leads to clinical failure and the potential development of multi-drug resistant strains. Resistant strains of tuberculosis further tax the health care delivery as second line anti-tubercular therapies are more likely to have side effects yet still require long-term adherence to therapy regimens.

The disclosed technology provides for the delivery of Capreomycin in an aerosol formulation. This provides for ease of delivery in both first and second line tuberculosis regimens. Furthermore, the aerosol formulation does not require extensive training of health-care workers to administer the therapy, minimizing the need for added personnel in underdeveloped countries. This, along with the increased product stability will enhance patient adherence to therapy and the potential reduction of disease burden, both for the patient and the population.

Dated: February 13, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–3710 Filed 2–19–04; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Combined Growth Factor-Deleted and Thymidine Kinase-Deleted Vaccinia Virus Vector

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services is contemplating the grant of an exclusive patent license to practice the inventions embodied in the PCT Patent Application No. PCT/US00/14679, filed May 26, 2000 [DHHS ref. E–181–1999/0–PCT–02], entitled "Combined Growth Factor-Deleted and Thymidine Kinase-Deleted Vaccinia Virus Vector," and all related foreign patents/patent applications, to PNP Therapeutics, Inc., which is located in Birmingham, Alabama. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of cancer via use of vaccinia virus vector in combination with the company's proprietary technology. This notice should be considered a modification of an earlier **Federal Register** notice (68 FR 6930–6931; February 11, 2003).

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 20, 2004, will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: George G. Pipia, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; E-mail: *pipiag@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and

argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

The present technology describes the use of "Growth Factor-Deleted and Thymidine Kinase-Deleted Vaccinia Virus Vector" for cancer therapy. Tumor-selective, replicating viruses may infect and kill cancer cells and efficiently express therapeutic genes in cancer cells. The current invention embodies mutant vaccinia virus expression vectors. These vectors, which are vaccinia virus growth factor-deleted and thymidine-kinase deleted, are substantially incapable of replicating in non-dividing cells, while maintaining specificity for cancer cells. It is therefore believed that the vectors will be of value for cancer therapy either by directly killing cancer cells or by expressing therapeutic agents in cancer cells while sparing normal, non-dividing cells.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 13, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–3709 Filed 2–19–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) Announcement of Availability of the Draft Expert Panel Report on Acrylamide; Announcement of Expert Panel Meeting on Acrylamide; Request for Public Comments

SUMMARY: The NTP CERHR announces: (1) availability of sections 1–4 of the draft expert panel report on acrylamide on March 15, 2004, and solicits written public comments on the report by April 29, 2004.

(2) the acrylamide expert panel meeting May 17–19, 2004, at the Holiday Inn Old Town Select, Alexandria, Virginia and invites the public to present oral comments at this meeting.

Questions ublic comments should be directed to Dr. Michael Shelby, CERHR Director (contact information below).

Draft Expert Panel Report on Acrylamide Available

The CERHR announces the availability of the draft expert panel report on acrylamide (CAS RN 79–06–1). Acrylamide is used in the production of polyacrylamide, which is used in water treatment, pulp and paper production, mineral processing, and scientific research. Polyacrylamide is used in the synthesis of dyes, adhesives, contact lenses, soil conditioners, cosmetics and skin creams, food packaging materials, and permanent press fabrics. In scientific research, it is used in molecular biology procedures such as electrophoresis. Acrylamide is a neurotoxicant and in animal studies has been shown to be a carcinogen, germ cell mutagen, and reproductive toxicant. The CERHR selected acrylamide for expert panel evaluation because of recent public concern for human exposures through its presence in some starchy foods cooked at high temperatures. In addition, recent data are available on human exposure, bioavailability, and reproductive toxicity.

Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be prepared at expert panel meeting)

Sections 1–4 will be available to the public on March 15, 2004, and can be obtained electronically on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in hard copy or compact disk by contacting Dr. Michael Shelby, Director CERHR [NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, telephone: (919) 541–3455; facsimile: (919) 316–4511; *shelby@niehs.nih.gov*].

Request for Written Comments on Draft Expert Panel Report

The CERHR invites written public comments on sections 1–4 of the draft expert panel report on acrylamide. Comments can be submitted in hard copy or electronic format and must be received by the CERHR by April 29, 2004. These comments will be distributed to the expert panel and CERHR staff for consideration in revising the draft report and in preparing for the expert panel meeting. They will be posted on the CERHR web site prior to the expert panel meeting. These comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any).

Expert Panel Meeting Planned

The CERHR will hold an expert panel meeting May 17–19, 2004, at the Holiday Inn Old Town Select 480 King Street Alexandria, VA 22314 (telephone: 703–549–6080, facsimile: 703–684–6508). The CERHR has asked the expert panel to review the scientific evidence regarding the potential reproductive and/or developmental toxicity associated with exposure to acrylamide. The expert panel will review and revise the draft expert panel report and reach conclusions regarding whether exposure to acrylamide is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs.

This meeting is open to the public and attendance is limited only by the available meeting room space. The meeting will begin at 8:30 a.m. each day. On May 17 and 18, it is anticipated that a lunch break will occur from noon–1 p.m. and that the meeting will adjourn 5–6 p.m. The meeting is expected to adjourn by noon on May 19; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below. Following the expert panel meeting and completion of the expert panel report, the CERHR will post the report on its web site and solicit public comment through a **Federal Register** notice.

Preliminary Meeting Agenda

Meeting begins at 8:30 a.m. each day. Lunch break anticipated from noon–1 p.m.

May 17, 2004

Opening remarks
Oral public comments (7 minutes per speaker; one representative per group, see below)
Review of sections 1–4 of the draft expert panel report on acrylamide
Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

May 18, 2004

Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

Preparation of draft summaries and conclusion statements

May 19, 2004

Presentation, discussion of, and agreement on summaries and conclusions

Closing comments

Oral Public Comments Welcome at Expert Panel Meeting

Time is set aside on May 17, 2004, for the presentation of oral public comments at the expert panel meeting. To facilitate planning, those persons wishing to make oral public comments are asked to contact Dr. Shelby by May 10 (contact information provided above). Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, email and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to Dr. Shelby by May 10. This information will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on May 17, 2004 (7:30–8:30 a.m.). Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Acrylamide Expert Panel

The CERHR expert panel is composed of independent scientists selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for this review.

Expert Panel Members and Affiliation

Jeanne M. Manson Ph.D., M.S.C.E., Chairperson, The Children's Hospital of Philadelphia, Philadelphia, PA

Michael Brabec, Ph.D., Eastern Michigan University, Ypsilanti, MI

Judy Buelke-Sam, M.A. , Toxicology Services, Greenfield, IN

Gary P. Carlson, Ph.D., Purdue University, West Lafayette, IN

Robert E. Chapin, Ph.D., Pfizer Inc., Groton, CT

John B. Favor, Ph.D., GSF—National Research Center for Environment and Health, Neuherberg, Germany

Lawrence J. Fischer, Ph.D., Michigan State University, East Lansing, MI

Dale Hattis, Ph.D., Clark University, Worcester, MA

Peter J. Lees, Ph.D., The Johns Hopkins University, Baltimore, MD

Sally Perreault-Darney, Ph.D., US Environmental Protection Agency, Research Triangle Park, NC

Joe C. Rutledge, MD, Children's Hospital and Regional Medical Center, Seattle, WA

Thomas J. Smith, Ph.D., C.I.H., Harvard School of Public Health, Boston, MA

Raymond R. Tice, Ph.D., Integrated Laboratory Systems, Inc., Research Triangle Park, NC

Peter K. Working, Ph.D., Cell Genesys, Inc., South San Francisco, CA

Background Information About the CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR website under "About CERHR" or in printed copy from the CERHR.

Dated: February 11, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–3711 Filed 2–19–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Submission for Review; Extension of Currently Approved Information Collection Requests for Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act Application Kit and SAFETY Act Forms 003 Through 007)

AGENCY: Office of the Under Secretary for Management, Department of Homeland Security.

ACTION: Notice; 30-day notice of information collections under review: SAFETY Act Application Kit and SAFETY Forms 003 through 007.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1640–0001, 1640–0002, 1640–0003, 1640–0004, 1640–0005, 1640–0006. The information collections were previously published in the **Federal Register** on October 16, 2003, at 68 FR 59696, allowing for OMB review and a 60-day public comment period. Comments received by DHS are being reviewed as applicable.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 22, 2004. This process is conduced in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone (202) 395–7316.

The Office of Management and Budget is particularly interested in comments which:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by calling Yvonne Pollard, Program Analyst Paperwork Reduction Act Contact, Office of the Chief Information Officer, Department of Homeland Security, Washington, DC 20528; telephone (202) 692–4221.

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Under Secretary for Science and Technology.

Title: Support Anti-Terrorism by Fostering Effective Technologies Act of 2002.

OMB No.: 1640–0001.

Frequency: On occasion.

Affected Public: Business or other for profit and not-for-profit institutions.

Estimated Number of Respondents: 1,000 respondents.

Estimated Time Per Respondent: 36–180 hours per response (average = 108 hours per response).

Total Burden Hours: 108,000.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Under Secretary for Science and Technology.

Title: Support Anti-Terrorism by Fostering Effective Technologies Act of 2002—Application for Transfer of Designation (DHS–S&T–I–SAFETY–003).

OMB No.: 1640–0002.

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions and individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15–30 minutes.

Total Burden Hours: 250.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Under Secretary for Science and Technology.

Title: Support Anti-Terrorism by Fostering Effective Technologies Act of 2002—Notice of License of Qualified Anti-Terrorism Technology (DHS–S&T–I SAFETY 004).

OMB No.: 1640–0003.

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions and individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15–30 minutes.

Total Burden Hours: 250.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Under Secretary for Science and Technology.

Title: Support Anti-Terrorism by Fostering Effective Technologies Act of 2002—Notice of License of Approved Anti-Terrorism Technology (DHS–S&T–I SAFETY 005).

OMB No.: 1640–0004.

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions and individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15–30 minute.

Total Burden Hours: 250.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Under Secretary for Science and Technology.

Title: Support Anti-Terrorism by Fostering Effective Technologies Act of 2002—Application for Modification of Designation (DHS–S&T–I SAFETY 006).

OMB No.: 1640–0005.

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions and individuals or households.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 10–20 hours.

Total Burden Hours: 5,000.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Under Secretary for Science and Technology.

Title: Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 "Application for Renewal of Certification of an Approved Product for Homeland Security (DHS–S&T–I SAFETY 007).

OMB No.: 1640–0006.

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions and individuals or households.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15–30 minutes.

Total Burden Hours: 250.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Description: The SAFETY Act provides incentives for the development and deployment of Anti-Terrorism Technologies (ATTs) by creating a system of "risk management" and a system of "litigation management." The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of ATTs from developing and commercializing technologies that could significantly reduce the risks or mitigate the effects of large-scale terrorist events. Without these protections, important technologies are not being deployed to counter harm resulting from a terrorist attack.

Dated: February 6, 2004.

Steve Cooper,

Chief Information Officer.

[FR Doc. 04–3664 Filed 2–19–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 22, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: St. Louis Zoo, St. Louis, Missouri, PRT–082568

The applicant requests a permit to import blood samples from Galapagos penguins (*Sphenisus mendiculus*) for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Erhardt F. Steinborn, Sherwood, OR, PRT–082583

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from Northern Beaufort Sea, polar bear population in Canada for personal use.

Applicant: Thomas H. Viuf, Tulsa, OK, PRT–082660

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: February 6, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–3734 Filed 2–19–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with this/these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
078687	Department Natural & Environmental Resources of Puerto Rico.	68 FR 66851; November 28, 2003	Jan. 29, 2004.
078757	Brigham Young University, Dept. of Integrative Bio.	68 FR 64638: November 14, 2003 (notice for master file 076005).	Feb. 4, 2004.
079868, 079870, 079871, 079872.	George Carden Circus International, Inc	68 FR 69418; December 12, 2003	Jan. 23, 2004.

Dated: February 6, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–3733 Filed 2–19–04; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–497]

U.S. International Trade Commission; Notice of Commission Determinations

In the Matter of: Certain Universal Transmitters for Garage Door Openers; (1) Not to Review One Initial Determination Terminating the Investigation as to the Patent Claims and (2) To Review and Affirm a Second Initial Determination Terminating the Investigation; Termination of the Investigation

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 initial determination (Order No. 13) terminating the investigation as to the patent claims therein. The Commission has also determined to

review and affirm the presiding administrative law judge's initial determination (Order No. 14) to terminate the investigation. The investigation is therefore terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the Commission's order, the public version of the administrative law judge's (ALJ's) initial determinations, 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. 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*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 26, 2003, based on a complaint filed by The Chamberlain Group, Inc. ("Chamberlain") of Elmhurst, Illinois. 68 FR 51301 (August 26, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain universal transmitters for garage door openers by reason of infringement of claims 1–8 of U.S. Patent No. RE 35,364 and claims 5–62 of U.S. Patent No. RE 37,986, and violation of section 1201(a)(2) of the Digital Millenium Copyright Act ("DMCA"), 17 U.S.C. 1201(a)(2). The respondents named in the complaint and the Commission's notice of investigation are Skylink Technologies, Inc.; Capital Prospect, Ltd.; and Philip Tsui (collectively, "respondents").

At the same time that the Commission instituted the investigation, it provisionally accepted Chamberlain's motion for temporary relief which accompanied the complaint and was based on the allegation that there was reason to believe that respondents were in violation of section 337. Chamberlain's motion for temporary relief was based solely on respondents' alleged violation of section 1201(a)(2) of the DMCA.

On November 4, 2004, the ALJ issued his initial determination on temporary relief, finding that (1) the Commission has subject matter jurisdiction over Chamberlain's DMCA claim, and (2) Chamberlain's allegation that respondents violate the DMCA had not been supported as a matter of law. He therefore concluded that there was no basis to issue temporary relief.

On November 24, 2003, the Commission issued a notice and order affirming the ALJ's initial determination on temporary relief. Specifically, the Commission affirmed the ALJ's conclusion that the Commission possesses subject matter jurisdiction under section 337 over Chamberlain's allegation of violation of section 1201(a)(2) of the DMCA. The Commission also affirmed the ALJ's conclusion that Chamberlain's allegation that respondents violate section 1201(a)(2) of the DMCA is not supported, *i.e.*, that there is no reason to believe a violation of section 337 exists with respect to Chamberlain's DMCA claim because it is unlikely that Chamberlain will succeed on the merits of that claim. In its November 24, 2003, order, the Commission noted that complainant and respondent Skylink are engaged in parallel litigation in the United States District Court for the Northern District of Illinois, *The Chamberlain Group, Inc.* v. *Skylink Technologies, Inc.*, Civ. No. 02 C 6376. The Commission further noted that it had been advised by respondents and the Commission investigative attorney that the District Court had, on summary judgment, ruled adversely to Chamberlain on the identical DMCA claim it raises here, that respondents had stated that they expected that ruling to be entered as a final judgment shortly, and that when it is Chamberlain's DMCA claim here will be barred by *res judicata*. The Commission advised that, should the proceedings in the District Court give rise to *res judicata*, the parties should raise that issue with the Commission promptly. The District Court has entered its ruling as a judgment, which is currently the subject of an appeal to the U.S. Court of Appeals for the Federal Circuit.

On December 16, 2003, Chamberlain moved to terminate the investigation in part based on the withdrawal of those portions of its complaint alleging infringement of U.S. Patent No. Re. 35,364 and U.S. Patent No. Re. 37,986. On January 14, 2004, the ALJ issued an initial determination (Order No. 13) granting Chamberlain's motion. No party petitioned for review of Order No. 13.

On December 19, 2003, respondents moved to terminate this investigation pursuant to Commission rule 210.21 as to Chamberlain's claim of violation of the DMCA, or alternatively to grant summary determination in respondents' favor on Chamberlain's DMCA claim by reason of *res judicata* and collateral estoppel based on the District Court's judgment. Also on December 19, 2003, respondents moved to terminate the entire investigation pursuant to Commission rule 210.21 on the basis of Chamberlain's stipulation and agreement that the investigation would be terminated if respondents prevailed on their then-pending motion for summary determination regarding Chamberlain's DMCA claim.

On January 14, 2004, the ALJ issued an initial determination, Order No. 14, granting respondents' motions to terminate the investigation in its entirety based on *res judicata* and finding moot respondents' motion based on the Chamberlain stipulation and agreement. Chamberlain petitioned for review of Order No. 14. Respondents and the Commission investigative attorney filed oppositions to that petition.

Having examined the relevant portions of the record in this investigation, including Orders Nos. 13 and 14, Chamberlain's petition for review of Order No. 14, and the oppositions of the respondents and the Commission investigative attorney to that petition, the Commission determined (1) to not review Order No. 13 and (2) to review Order No. 14, and further determined that Chamberlain's DMCA claim is barred under the doctrine of claim preclusion as a result of the District Court judgment. The Commission's determinations disposed of all the unfair practices alleged in this investigation, resulting in the termination of the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.43–210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.43–210.45).

By order of the Commission.

Issued: February 17, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–3737 Filed 2–19–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 42 U.S.C. 9622(d), notice is hereby given that on February 11, 2004, a proposed First Amended Consent Decree ("Amended Decree") in *United States and People of the State of Illinois, ex rel. Madigan* v. *Manville Sales Corporation,* Civil Action No. 88C 630, was lodged with the United States District Court for the Northern District of Illinois.

In this action, the United States asserted claims under 42 U.S.C. 9606 and 9607 to require Manville Sales Corporation, now known as Johns Manville, to perform certain response actions and to reimburse response costs incurred by the United States in response to releases and threatened releases of hazardous substances at a facility known as the Johns Manville Waukegan Disposal Area in Waukegan, Illinois (the "Site"). The State of Illinois intervened in the action, which was resolved in March of 1988 through entry of a Consent Decree (the "1988 Decree") that provided for Johns Manville to perform a remedial action that the United States Environmental Protection Agency ("EPA") selected in a Record of Decision dated June 30, 1987.

During construction of the remedy required under the 1988 Decree, EPA issued two Explanations of Significant Differences approving changes to certain aspects of the remedy. The Amended Decree provides for implementation of these changes.

Requirements modified or added by the Amended Decree include: (1) Requirements for cleanup of additional on-site areas where asbestos was discovered after entry of the Consent Decree; (2) revised design specifications for "cover" materials required in certain areas of the site; (3) provisions requiring excavation or capping of contaminated sediments in the Industrial Canal and closure of other on-site landfill areas and wastewater treatment system units used in Johns Manville's operations at the Site until 1998; (4) provisions restricting land use to prevent interference with the integrity or protectiveness of the remedy; and (5) provisions requiring that any subsequent conveyances of property at the Site be subject to environmental easements and restrictive covenants. The Amended Decree also updates various provisions of the Consent Decree to reflect more closely language of EPA's RD/RA Model Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amended Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Manville Sales Corporation,* D.J. Ref. 90–11–1–7B.

The Amended Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the Amended Decree, may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Amended Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $35.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $18.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–3658 Filed 2–19–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: Open Letter to States With Permits That Appear to Qualify as Alternatives to NICS Checks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by February 27, 2004. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503.

Comments are encouraged and will be accepted for 60 days until April 20, 2004.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to John A. Spurgeon, Deputy Chief, Firearms Programs, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Open Letter to States With Permits That Appear to Qualify as Alternatives to NICS Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. *Other:* None. The purpose of this information collection is to ensure that only State permits that meet the statutory requirements contained in the Gun Control Act qualify as alternatives to a National Instant Criminal Background Check System (NICS) check.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 21 respondents will take 1 hour to prepare a written response to ATF.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 21 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 13, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–3673 Filed 2–19–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Advisory Committee on Apprenticeship (ACA).

TIME AND DATE: The meeting will begin at approximately 8:30 a.m. on Tuesday, March 9, and continue until approximately 5 p.m. The meeting will reconvene at approximately 8:30 a.m. on Wednesday, March 10, and continue until approximately 4 p.m.

PLACE: Wyndham Baltimore Inner Harbor Hotel, 101 West Fayette Street, Baltimore, Maryland 21201, Telephone: (410) 752–1100.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–2796 (this is not a toll-free number).

MATTERS TO BE CONSIDERED: The agenda will focus on a series of status reports from the Committee's subcommittees, and selected presenters on the following topics:

- Status of Recommendations
- Technical Assistance Provider's Bank
- National Institute for Metalworking Skills (NIMS) Competency-Based Apprenticeship
- One-Stop System
- Partnerships with Education
- High-Growth Job Training Initiative

STATUS: Members of the public are invited to attend the proceedings. Individuals with special needs should contact Ms. Marion Winters at (202) 693–3786 no later than March 2, 2004, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by forwarding their request to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions should be sent by March 2, 2004, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. Anthony Swoope, by March 2, 2004. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 13th day of February, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 04–3678 Filed 2–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions are prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wages rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3104, Washington DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Delaware
DE030002 (Jun. 13, 2003)
DE030004 (Jun. 13, 2003)
DE030005 (Jun. 13, 2003)
DE030009 (Jun. 13, 2003)
Pennsylvania
PA030001 (Jun. 13, 2003)
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
PA030013 (Jun. 13, 2003)
PA030016 (Jun. 13, 2003)
PA030018 (Jun. 13, 2003)
PA030027 (Jun. 13, 2003)
PA030032 (Jun. 13, 2003)
PA030033 (Jun. 13, 2003)
PA030038 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
PA030051 (Jun. 13, 2003)
PA030053 (Jun. 13, 2003)
PA030055 (Jun. 13, 2003)
PA030062 (Jun. 13, 2003)
PA030065 (Jun. 13, 2003)

Volume III

South Carolina
SC030023 (Jun. 13, 2003)

Volume IV

None

Volume V

Nebraska
NE030003 (Jun. 13, 2003)
NE030007 (Jun. 13, 2003)
NE030009 (Jun. 13, 2003)
NE030010 (Jun. 13, 2003)
NE030011 (Jun. 13, 2003)
NE030019 (Jun. 13, 2003)
NE030041 (Jun. 13, 2003)
Oklahoma
OK030013 (Jun. 13, 2003)
OK030014 (Jun. 13, 2003)
OK030016 (Jun. 13, 2003)
OK030034 (Jun. 13, 2003)

Volume VI

Colorado
CO030001 (Jun. 13, 2003)
CO030002 (Jun. 13, 2003)
CO030003 (Jun. 13, 2003)
CO030004 (Jun. 13, 2003)
CO030005 (Jun. 13, 2003)
CO030007 (Jun. 13, 2003)
CO030008 (Jun. 13, 2003)
CO030009 (Jun. 13, 2003)
CO030010 (Jun. 13, 2003)
CO030011 (Jun. 13, 2003)
CO030012 (Jun. 13, 2003)
CO030013 (Jun. 13, 2003)
CO030016 (Jun. 13, 2003)

Volume VII

California
CA030029 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: Signed at Washington, DC, this 13th day of February 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–3593 Filed 2–19–04; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel. .

2. *Current OMB approval number:* 3150–0046

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

5. *The number of annual respondents:* 50

6. *The number of hours needed annually to complete the requirement or request:* 267 hours (242 hours reporting and 25 hours recordkeeping)

7. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC-classified information and material.

Submit, by April 20, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 12th day of February 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–3675 Filed 2–19–04; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on March 3–6, 2004, 11545 Rockville Pike, Rockville, Maryland: The date of this meeting was previously published in the **Federal Register** on Monday, November 21, 2003 (68 FR 65743).

Wednesday, March 3, 2004 (Closed)

11 a.m.–6:30 p.m.: Safeguards and Security (Closed)—The Committee will hear presentations by and hold discussions with representatives of the Office of Nuclear Regulatory Research, the Office of Nuclear Security and Incident Response, and the Nuclear Energy Institute regarding safeguards and security matters.

Thursday, March 4, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: License Renewal Application for the H. B. Robinson Steam Electric Plant, Unit 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Carolina Power and Light regarding the License Renewal Application for the H. B. Robinson Steam Electric Plant, Unit 2 and the associated final Safety Evaluation Report prepared by the NRC staff.

10:15 a.m.–12:15 p.m.: Interim Review of the AP1000 Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding the resolution of open items identified in the NRC staff's Draft Safety Evaluation Report as well as the issues previously raised by the ACRS Subcommittee on Thermal-Hydraulic Phenomena, and related matters.

1:15 p.m.–2:45 p.m.: License Renewal Application for the Virgil C. Summer Nuclear Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and South Carolina Electric and Gas regarding the License Renewal Application for the Virgil C..Summer Nuclear Station and the associated final Safety Evaluation Report prepared by the NRC staff.

3 p.m.–4 p.m.: Proposed Criteria for ACRS Evaluation of the Effectiveness (Quality) of the NRC Safety Research Programs (Open)—The Committee will discuss the proposed criteria for use by the ACRS in evaluating the effectiveness (Quality) of the NRC safety research programs.

4:15 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports on Resolution of Certain Items Identified by the ACRS in NUREG–1740 Related to Differing Professional Opinion on Steam Generator Tube Integrity, and Response to the December 22, 2003 EDO Response to the September 30, 2003 ACRS Report on the Draft Final Revision 3 to Regulatory Guide 1.82, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident."

Friday, March 5, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:15 a.m.: Divergence in Regulatory Approaches Between U.S. and Several Other Countries (Open)—The Committee will discuss the differences in regulatory approaches between U.S. and several other countries.

9:30 a.m.–11:30 a.m.: Joint Meeting of ACRS/ACNW with the EDO/Office Directors of NRR/RES/NMSS (Open)—The Committee will meet with the NRC Executive Director for Operations (EDO) and Directors of the Offices of Nuclear Reactor Regulation (NRR), Nuclear Regulatory Research (RES), and Nuclear Material Safety and Safeguards (NMSS) to discuss items of mutual interest, including: Risk-informing 10 CFR 50.46, PWR sump performance issues, PRA quality, spent fuel pool issues, risk-informing NMSS regulations, and transportation-related issues.

12:30 p.m.–1:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of

ACRS business, including anticipated workload and member assignments.

1:30 p.m.–1:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the EDO to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, March 6, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12 noon: Preparation of ACRS Reports (Open)—The Committee will continue discussion of the proposed ACRS reports.

12 noon–12:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59644). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss and protect information classified as national security information as well as unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3), and Westinghouse proprietary information per 5 U.S.C. 552(b)(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., et.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: February 13, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–3674 Filed 2–19–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Extend the Completion Times for Inoperable Containment Isolation Valves at Combustion Engineering Plants Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application relating to changes to the completion time in Standard Technical Specifications (STS) 3.6.3, "Containment Isolation Valves (Atmospheric and Dual)," for Combustion Engineering (CE) plants. The change to the Technical Specifications (TSs) would extend to 7 days the completion time to isolate the affected penetration flow path when selected containment isolation valves (CIVs) are inoperable in either a penetration flow path with two CIVs or in a penetration flow path with one CIV in a closed system. These changes are based on Revision 2 of Technical Specification Task Force (TSTF) change traveler TSTF–373, "Increase CIV Completion Time in Accordance with CE–NPSD–1168," which has been approved for incorporation into the STS for CE plants (NUREG–1432). The purpose of this model is to permit the NRC to efficiently process amendments that propose to modify TSs to extend the completion time for CIVs. Licensees of nuclear power reactors to which the model applies may request amendments using the model application.

DATES: The NRC staff issued a **Federal Register** Notice (68 FR 64375, November 13, 2003) which provided a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to the extension of the completion time for TS actions related to inoperable CIVs at CE plants. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to extend the CIV completion times as described in Revision 2 to TSTF–373. The staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to request the subject TS change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March

20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the extension of the completion time to isolate the affected penetration flow path when selected CIVs are inoperable in either a penetration flow path with two CIVs or in a penetration flow path with one CIV in a closed system. This change was proposed for incorporation into the STS by the CE Owners Group (CEOG) participants in the TSTF and is designated as Revision 2 to TSTF–373. TSTF–373 is supported by CE–NPSD–1168–A, "Joint Applications Report for Containment Isolation Valve AOT [Allowed Outage Time] Extension," dated January 2001, accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession Number ML010780257) at the NRC Web site at *www@nrc.gov*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the referencing the model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Applicability

This proposed change to revise the TS completion times for selected CIVs is applicable to CE pressurized water reactors.

Public Notices

In a notice in the **Federal Register** dated November 13, 2003 (68 FR 64375), the NRC staff requested comment on the use of the CLIIP to process requests to extend the completion time for selected inoperable CIVs at CE plants as described in Revision 2 to TSTF–373. TSTF–373, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O–1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The NRC staff did not receive comments following the notice for comment about the use of the CLIIP for licensees to adopt TSTF–373. As described in the model application prepared by the staff, licensees may reference in their plant-specific applications to adopt this change to TSs, the SE, NSHC determination, and environmental assessment previously published in the **Federal Register** (68 FR 64375, November 13, 2003).

Dated at Rockville, Maryland, this 10th day of February 2004.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–3676 Filed 2–19–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: OMB requests comments on 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulation. The full Draft Report is available at *http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html*, and is divided into two chapters. Chapter I presents estimates of the costs and benefits of Federal regulation and paperwork, with an emphasis on the major regulations issued between October 1, 2002 and September 31, 2003. Chapter I also presents a discussion of the impact of regulation on State, local, and tribal governments, small businesses, wages, and economic growth. Chapter II reviews the economics literature on the impacts of regulation on manufacturing enterprises, and requests public nominations of regulatory reforms relevant to this sector. Chapter II also requests suggestions to simplify IRS paperwork requirements, which are particularly burdensome for small businesses.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by May 20, 2004.

ADDRESSES: We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft report be electronically mailed to *OIRA_BC_RPT@omb.eop.gov*, or faxed to (202) 395–7245. You may also submit comments to Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. For Further Information, contact: Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–3084.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the "'Regulatory Right-to-Know Act,'" (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendation for reform. The Act states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Act also states that the report should go

through notice and comment and peer review.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 04–3652 Filed 2–19–04; 8:45 am]

BILLING CODE 3110–01–U

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIMES: Tuesday, March 2, 2004; 10:30 a.m. and 2:30 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: March 2—10:30 a.m. (Closed); 2:30 p.m. (Open)

MATTERS TO BE CONSIDERED:

Tuesday, March 2—10:30 a.m. (Closed)

1. Financial Update.
2. Negotiated Service Agreement.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, March 2—2:30 p.m. (Open)

1. Minutes of the Previous Meeting, February 2–3, 2004.
2. Remarks of the Postmaster General and CEO.
3. Committee Reports.
4. Capital Investment.

a. Labor Scheduler, Phase 1 Modification Request.

5. Flats Productivity.
6. Customer Connect Update.
7. Tentative Agenda for the April 15, 2004, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 04–3870 Filed 2–18–04; 3:06 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Survivor Insurance Annuities.

(2) *Form(s) submitted:* AA–17, AA–17b, AA–17cert, AA–18, AA–19, AA–19a, AA–20.

(3) *OMB Number:* 3220–0030.

(4) *Expiration date of current OMB clearance:* 6/30/2004.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 4,137.

(8) *Total annual responses:* 4,137.

(9) *Total annual reporting hours:* 1,718.

(10) *Collection description:* Under Section 2(d) of the Railroad Retirement Act, monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husband), mothers (fathers), remarried widow(er)s and grandchildren of deceased railroad employees. The collection obtains information needed by the RRB for determining entitlement to and amount of the annuity applied for.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer, (312) 751–3363 or *Charles.Mierzwa@RRB.GOV*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@RRB.GOV* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–3663 Filed 2–19–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 23, 2004:

Open Meetings will be held on Tuesday, February 24, 2004 at 2 p.m., and Wednesday, February 25, 2004 at 10 a.m., in Room 1C30, the William O. Douglas Room, and a Closed Meeting will be held on Wednesday, February 25, 2004 at 12 noon.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), and (10) and 17 CFR 200.402(a)(5), (7), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, February 25 will be:

Institution of administrative proceedings of an enforcement nature; and Institution of injunctive actions.

The subject matter of the Open Meeting scheduled for Tuesday, February 24, 2004 will be:

The Commission will consider whether to publish for public comment a release setting forth five proposals designed to enhance and modernize the national market system. In particular, the Commission will consider whether to propose the following rules and amendments:

1. Regulation NMS, which would redesignate the national market system rules adopted under Section 11A of the Securities Exchange Act of 1934 ("Exchange Act") as Regulation NMS, and would include a new definitional rule, proposed Rule 609, that would designate reported securities as national market system securities and make certain other technical changes, and include all of the defined terms used in the national market system rules;

2. Rule 610 of Regulation NMS, which would modernize the terms and standards of access to quotations and the execution of orders in equity securities in the national market system, and make conforming changes to Rule 301 of Regulation ATS;

3. Rule 611 of Regulation NMS, which would require market centers to establish, maintain, and enforce policies and procedures designed to prevent the execution of trade-throughs in their markets;

4. Rule 612 of Regulation NMS, which generally would prohibit market participants from accepting, ranking, or displaying orders, quotes, or indications of interest in a pricing increment finer than a penny in any NMS Stock; and

5. Amendments to the three joint industry plans under which consolidated market data for equity securities is disseminated to the public that would modify the formulas for allocating plan net income and create non-voting advisory committees, and amendments to current Exchange Act Rules 11Aa3–1 and 11Ac1–2 (redesignated as Rule 601 and 603 of Regulation NMS) that would modify the requirements for consolidation and display of market data.

For further information, please contact Yvonne Fraticelli at (202) 942–0197 (Reg NMS Proposal); Jennifer Colihan at (202) 942–0735 (Trade-Through Proposal); Patrick Joyce at (202) 942–0779 (Access Proposal); Ronesha Butler at (202) 942–0791 (Sub-Pennies Proposal); or Sapna Patel at (202) 942–0166 (Market Data Proposal).

The subject matter of the Open Meeting scheduled for Wednesday, February 25, 2004 will be:

The Commission will consider a recommendation to propose for public comment rule 22c–2 under the Investment Company Act of 1940. The recommended proposal would require open-end investment companies to impose a two percent redemption fee on the redemption of shares held for five business days or fewer. The Commission also will consider whether to ask for comment about additional ways to address market timing.

For further information, please contact Shaswat Das, Senior Counsel, Division of Investment Management, at (202) 942–0650.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 17, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–3831 Filed 2–18–04; 12:59 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49225; File No. SR–PCX–2003–62]

Self-Regulatory Organizations; Pacific Exchange, Inc; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Initial Listing Requirements for Securities Listed Under the Tier I and Tier II Designations

February 12, 2004.

On November 4, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rules 5.2(c)(4) and 5.2(k)(4) to replace the term "non-recurring" with the term "income from continuing operations," a term which is recognized under Generally Accepted Accounting Principles ("GAAP"). The proposed rule change also amends PCXE Rule 5.2(c)(4) to eliminate the requirement that an issuer have net income of at least $400,000, excluding non-recurring and extraordinary items. The Exchange submitted an amendment to the proposed rule change on December 17, 2003.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 9, 2004.[4] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, particularly, section 6(b)(5) of the Act.[6] The Commission believes that amending PCXE Rules 5.2(c)(4) and 5.2(k)(4) to replace the term "non-recurring" with the term "income from continuing operations," a term which is recognized under GAAP, promotes just and equitable principles of trade and is not designed to permit unfair discrimination among issuers. The Commission notes that removing from PCXE Rule 5.2(c)(4) the requirement that an issuer have net income of at least $400,000, excluding non-recurring and extraordinary items, conforms to the initial listing requirements of another exchange.[7] The Commission further notes that the proposed rule change merely clarifies the Exchange's current listing standards and is not designed to make the Exchange's listing standards more or less restrictive or alter the method upon which the Exchange calculates whether an issuer satisfies these standards.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (SR–PCX–2003–62) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3667 Filed 2–19–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 17, 2003, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 49013 (December 31, 2003), 69 FR 1610.

[5] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* American Stock Exchange LLC Company Guide section 101(a)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 22, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and

David_Rostker@omb.eop.gov, fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Small Business and Agriculture Regulatory Enforcement form.

No.: 1993.

Frequency: On Occasion.

Description of Respondents: Small Business Owners and Farmers.

Responses: 400.

Annual Burden: 300.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 04–3748 Filed 2–19–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 22, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBDC Program and Financial Reports.

No.: SF–269, 272 and SBA 2113.

Frequency: On Occasion.

Description of Respondents: SBDC Directors.

Responses: 63.

Annual Burden: 8,568.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 04–3749 Filed 2–19–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 22, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number (202) 395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBIC Management Assessment Questionnaire & License, Application Exhibits to SBIC License, Application/ Management Assessment Questionnaire.

Form Nos.: 2181, 2182, 2183.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Responses: 680.

Annual Burden: 10,880.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 04–3750 Filed 2–19–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3562]

State of California; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective February 6, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning December 22, 2003 and continuing through February 6, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage remains as March 15, 2004, and for economic injury the deadline is October 13, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 12, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–3751 Filed 2–19–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice: 4626]

60-Day Notice of Proposed Information Collection: Form DS–156E, Nonimmigrant Treaty Trader/Investor Application; OMB Control #1405–0101

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant Treaty Trader/Investor Application.

Frequency: On occasion. Once per respondent.

Form Number: DS–156E.

Respondents: Nonimmigrant treaty trader/investor visa applicants.

Estimated Number of Respondents: 17,000 per year.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 35,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1166.

Dated: February 10, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–3727 Filed 2–19–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice: 4627]

60-Day Notice of Proposed Information Collection: Form DS–156K, Nonimmigrant Fiance(e) Visa Application; OMB Control #1405–0096

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant Fiance(e) Visa Application.

Frequency: On occasion. Once per respondent.

Form Number: DS–156K.

Respondents: Aliens applying for a nonimmigrant visa to enter the U.S. as the fiance(e) of a U.S. citizen.

Estimated Number of Respondents: 35,000 per year.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 35,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1166.

Dated: February 10, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 04–3728 Filed 2–19–04; 8:45 am]

BILLING CODE 4710–06–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for Office of Management & Budget (OMB) review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801: (423) 751–6832. (SC: 0009BL5) Comments should be sent to the OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than March 22, 2004.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission. proposal to extend with revisions a currently approved collection of information (OMB control number 3316–0019).

Title of Information Collection: energy right® Program.

Frequency of Use: On occasion.

Type of Affected Public: Residential and small commercial consumers.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 41,000.

Estimated Total Annual Burden Hours: 12,600.

Estimated Average Burden Hours Per Response: 1.03.

This information is used by distributors of TVA power to assist in identifying and financing energy improvements for their electrical energy customers.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations Information Services.

[FR Doc. 04–3689 Filed 2–19–04; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

[Docket No.: MARAD 2004—17114]

Availability of a Finding of No Significant Impact

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of the availability of a Finding of No Significant Impact.

SUMMARY: The purpose of this notice is to make available to the public the Finding of No Significant Impact (FONSI) derived from the Environmental Assessment (EA) regarding the Port of Anchorage (Port) Road and Rail Extension, Port Intermodal Expansion Project. The purpose for the project is to improve and enhance the existing road and rail capability at the Port.

FOR FURTHER INFORMATION CONTACT: Daniel E. Yuska, Jr., Environmental Protection Specialist, Office of Environmental Activities, U.S. Maritime Administration, 400 7th Street, SW., Washington, DC 20590; telephone (202) 366–0714, fax (202) 366–0714.

SUPPLEMENTARY INFORMATION: The Maritime Administration, in cooperation with the Port of Anchorage, completed an EA that studied potential environmental effects associated with the expansion of the existing road and rail system used by the Port. The EA considered potential effects to the natural and human environments including: Air quality; water quality; geology and soils; coastal resources; terrestrial resources; aquatic resources; navigation; hazardous materials; cultural and historic resources; visual and aesthetic resources; and other topics associated with the proposed action. The FONSI is based on the analysis presented in the Port of Anchorage Intermodal Expansion, Road and Rail Environmental Assessment. The FONSI and the EA are available for review online at *http://www.marad.dot.gov; http://dms.dot.gov; www.portofanchorage.org;* and at the Loussac Library in Anchorage.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: February 17, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–3726 Filed 2–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Security Act of 2003, Subtitle D—National Defense Tank Vessel Construction Assistance

AGENCY: Maritime Administration, DOT.

ACTION: Notice of request for competitive proposals for construction of new product tank vessels.

SUMMARY: This notice solicits competitive proposals for the construction in the United States of new product tank vessels necessary to meet the commercial and national security needs of the United States and to be built with assistance under subtitle D of the Maritime Security Act of 2003.

FOR FURTHER INFORMATION CONTACT: Gregory V. Sparkman, Office of Insurance and Shipping Analysis, Maritime Administration, Room 8117, 400 Seventh Street, SW., Washington, DC 20590; Telephone (202) 366–2400; Fax: (202) 366–7901.

ADDRESSES: Applications must be mailed, delivered in person or faxed (in which case an original must be subsequently received) to the Secretary, Maritime Administration, Room 7218, 400 Seventh Street, SW., Washington, DC 20590; Fax (202) 366–9206.

SUPPLEMENTARY INFORMATION: Under subtitle D of the Maritime Security Act of 2003, Public Law 108–199, National Defense Tank Vessel Construction Assistance, the Secretary of Transportation, acting through the Maritime Administrator, has established a program to provide financial assistance for the construction in the United States of a fleet of up to 5 privately owned product tank vessels: (1) to be operated in commercial service in foreign commerce; and (2) to be available for national defense purposes in time of war or national emergency pursuant to an Emergency Preparedness Plan approved by the Secretary of Defense pursuant to section 3543(e) of subtitle D.

This notice solicits requests for competitive proposals for the construction of new product tank vessels necessary to meet the commercial and national security needs of the United States and to be built with assistance under subtitle D of the Maritime Security Act of 2003.

Any citizen of the United States or any shipyard in the United States may submit a proposal to the Maritime Administrator. The Secretary, acting through the Maritime Administrator, with the concurrence of the Secretary of Defense, may enter into an agreement with the submitter of a proposal for construction of a new product tank vessel of not less than 35,000 deadweight tons and not greater than 60,000 deadweight tons, that—

(A) Will meet the requirements of foreign commerce;

(B) Is capable of carrying militarily useful petroleum products, and will be suitable for national defense or military purposes in time of war, national emergency, or other military contingency; and

(C) Will meet the construction standards necessary to be documented under the laws of the United States.

The shipyard in which the vessel will be constructed must be determined to have the necessary capacity and expertise to successfully construct the proposed number and type of product tank vessels in a reasonable period of time as determined by the Secretary of Transportation, acting through the Maritime Administrator, taking into consideration the recent prior commercial shipbuilding history of the proposed shipyard in delivering a vessel or series of vessels on time and in accordance with the contract price and specifications. Additionally, the person proposed to be the operator of the proposed vessel must be determined to possess the ability, experience, financial resources, and any other qualifications determined to be necessary by the Secretary, acting through the Maritime Administrator, for the operation and maintenance of the vessel.

Subject to the above considerations, the Secretary, acting through the Maritime Administrator, shall give priority consideration to a proposal submitted by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and may give priority consideration to proposals that provide the best value to the Government, taking into consideration: (1) The costs of vessel construction; and (2) the commercial and national security needs of the United States.

If it is determined that the proposal fulfills the requirements of subtitle D, the Secretary, acting through the Maritime Administrator, may enter into a contract with the proposed purchaser and the proposed shipyard for the construction of a product tank vessel with assistance under subtitle D. The contract shall provide for a payment, subject to the availability of appropriations, of up to 75 percent of the actual construction cost of the vessel, but in no case more than $50,000,000 per vessel. The contract shall require that construction of a vessel with assistance under subtitle D shall be performed in a shipyard in the United States. The contract shall further require that, upon delivery of a vessel constructed with assistance under the contract, the vessel shall be documented under chapter 121 of title 46, United States Code with a registry endorsement only. A vessel constructed with assistance under subtitle D shall not be eligible for a certificate of documentation with a coastwise

endorsement. Section 9(g) of the Shipping Act, 1916, (46 App. U.S.C. 808(g)) shall not apply to a vessel constructed with assistance under Subtitle D. Additionally, a contract under Subtitle D shall require that the person who will be the operator of a vessel constructed with assistance under the contract shall enter into an Emergency Preparedness Agreement for the vessel under section 53107 of title 46, United States Code, as amended by the Maritime Security Act of 2003.

For purposes of the application, under paragraph (1), of section 53107 of title 46, United States Code, to construct a vessel with assistance under subtitle D, the term "contractor" as used in that section means the person who will be the operator of a vessel constructed with assistance under subtitle D.

The Secretary, acting through the Maritime Administrator, shall incorporate in the contract the requirements set forth in subtitle D, and may incorporate in the contract any additional terms considered necessary.

The Secretary, acting through the Maritime Administrator, shall give priority to guarantees and commitments under section 1103 of the Merchant Marine Act, 1936 for vessels that are otherwise eligible for a guarantee under that section and that are constructed with assistance under subtitle D.

Request for Proposals

The Maritime Administration has developed a detailed Request for Proposals (RFP) for those interested in participating in the National Defense Tank Vessel Construction Assistance Program. The RFP sets forth all requirements of the Program and any interested party should refer directly to that document. The RFP will be available on the Internet at *http://www.fedbizopps.gov* and *http://www.marad.dot.gov* on or about February 20, 2004. Hard copies of the RFP will be available in the office of the Secretary, Maritime Administration (*see* **ADDRESSES** section for contact information).

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: February 13, 2004.

Joel C. Richard,

Secretary.

[FR Doc. 04–3668 Filed 2–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 89–61

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 Notice 89–61, Imported Substances; Rules for Filing a Petition.

DATES: Written comments should be received on or before April 20, 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 information collection 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: Imported Substances; Rules for Filing a Petition.

OMB Number: 1545–1117.

Notice Number: Notice 89–61.

Abstract: Section 4671 of the Internal Revenue Code imposes a tax on the sale or use of certain imported taxable substances by the importer. Code section 4672 provides an initial list of taxable substances and provides that importers and exporters may petition the Secretary of the Treasury to modify the list. Notice 89–61 sets forth the procedures to be followed in petitioning the Secretary.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3735 Filed 2–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106542–98]

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 proposed regulation, REG–106542–98, Election to Treat Trust as Part of an Estate (§ 1.645–1).

DATES: Written comments should be received on or before April 20, 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 this regulation 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: Election to Treat Trust as Part of an Estate.

OMB Number: 1545–1578.

Regulation Project Number: REG–106542–98.

Abstract: This regulation describes the procedures and requirements for making an election to have certain revocable trusts treated and taxed as part of an estate. The Taxpayer Relief Act of 1997 added section 646 to the Internal Revenue Code to permit the election.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3736 Filed 2–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 22, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0176."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0176" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Monthly Record of Training and Wages, VA Form 28–1905c.

OMB Control Number: 2900–0176.

Type of Review: Extension of a currently approved collection.

Abstract: On-job trainers use VA Form 20–1905c to maintain accurate records on a trainee's progress toward their rehabilitation goals as well as recording the trainee's on-job training monthly wages. Trainers report these wages on the form at the beginning of the program and at any time the trainee's wage rate changes. Following a trainee's completion of a vocational rehabilitation program, the trainer submits the form to the trainee's case manager to monitor the participant's training and to ensure that the participant is progressing and learning the skills necessary to carry out the duties of the occupational goal.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 13, 2003, at pages 64429–64430.

Affected Public: Individuals or households, business or other for-profit.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 12,000.

Dated: February 9, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–3724 Filed 2–19–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 69, No. 34
Friday, February 20, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9087]

RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

Correction

In rule document 03–21354 beginning on page 51394 in the issue of Tuesday, August 26, 2003, make the following corrections:

§ 1.883–1 [Corrected]

1. On page 51406, in § 1.883, in the first column, in paragraph (h)(4)(v), in the seventh line, "as an entirely" should read "as entirely".

§ 1.883–4 [Corrected]

2. On page 51411, in § 1.883–4, in the second column, in paragraph (c)(2)(iii), in Example 3, in the first and second lines,

"Stock held through tiered partnerships"

should read

"Stock held through tiered partnerships".

3. On page 51413, in the same section, in the first column, in paragraph (d)(3)(iii)(B), in the last line, "(C)(2)" should read "(C)(*2*)".

[FR Doc. C3–21354 Filed 2–19–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–25

Correction

In notice document 04–3121 beginning on page 7069 in the issue of Thursday, February 12, 2004, make the following correction:

On page 7070, in the first column, under **SUPPLEMENTARY INFORMATION**, the second line should read "*OMB Number*: 1545–1595."

[FR Doc. C4–3121 Filed 2–19–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
February 20, 2004

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ransom, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ME, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; (These are not toll-free numbers).

Dated: February 12, 2004.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/20/04

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 02915
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200310050
Status: Excess
Comment: 1224 sq. ft., most recent use—bath house, off-site use only

Alaska

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

5 Bldgs. 09108, 09110–09112, 09114
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020160
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020163
Status: Unutilized
Comment: 11520 sq. ft., concrete, most recent use—NCO–ENL FH, off-site use only

Bldgs. 09164, 09165
Fort Richardson
Ft. Richardson Co: AK 99505–6500

Landholding Agency: Army
Property Number: 21200020164
Status: Unutilized
Comment: 2304 & 2880 sq. ft., most recent use—storage, off-site use only

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 00390
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030067
Status: Excess
Comment: 13,632 sq. ft., off-site use only

Bldgs. 01200, 01202
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030068
Status: Excess
Comment: 4508 & 6366 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. 01205–01207
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030070
Status: Excess
Comment: various sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. 01208, 01210, 01212
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030071
Status: Excess
Comment: various sq ft., most recent use—hazard bldg., off-site use only

Bldgs. 01213, 01214
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030072
Status: Excess
Comment: 11964 & 13740 sq. ft., most recent use—transient UPH, off-site use only

Bldgs. 01218, 01230
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030073
Status: Excess
Comment: 480 & 188 sq. ft., most recent use—hazard bldgs., off-site use only

Bldgs. 01231, 01232
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030074
Status: Excess
Comment: 458 & 4260 sq. ft., most recent use—hazard bldgs., off-site use only

Bldg. 01234
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030075
Status: Excess
Comment: 615 sq. ft., most recent use—admin., off-site use only

Bldg. 01237
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030076
Status: Excess
Comment: 408 sq. ft., most recent use—fuel/pol bldg., off-site use only

Bldg. 01272
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030077
Status: Excess
Comment: 308 sq. ft., most recent use—storage, off-site use only

Bldg. 08109
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030080
Status: Excess
Comment: 1920 sq. ft., most recent use—storage, off-site use only

Armory
NG Noorvik
Noorvik Co: AK 99763–
Landholding Agency: Army
Property Number: 21200110075
Status: Unutilized
Comment: 1200 sq. ft., most recent use—armory, off-site use only

Bldg. 00229
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200120085
Status: Excess
Comment: 13,056 sq. ft., off-site use only

Bldg. 00001
Kiana Natl Guard Armory
Kiana Co: AK 99749–
Landholding Agency: Army
Property Number: 21200340075
Status: Excess
Comment: 1200 sq. ft., butler bldg., needs repair, off-site use only

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only

Bldg. 00500
Yuma Proving Ground
Yuma Co: AZ 85365–9498
Landholding Agency: Army
Property Number: 21200340076
Status: Unutilized
Comment: 4171 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training, off-site use only

California

Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Landholding Agency: Army
Property Number: 21200020167
Status: Unutilized
Comment: 4780 & 10950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only

Bldgs. 18026, 18028
Camp Roberts
Monterey Co: CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comment: 2024 sq. ft. & 487 sq. ft., concrete, poor condition, off-site use only

Colorado

Bldg. F–107
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130082
Status: Unutilized
Comment: 10,126 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130084
Status: Unutilized
Comment: 400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only

Bldg. S6263
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310051
Status: Unutilized
Comment: 24,902 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—offices, off-site use only

Bldg. S6265
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310052
Status: Unutilized
Comment: 19,499 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. S6266
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310053
Status: Unutilized
Comment: 27,286 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. S6267
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310054
Status: Unutilized
Comment: 20,075 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. S6286
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310055
Status: Unutilized
Comment: 13,128 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—armory, off-site use only

Bldg. T–211
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340080
Status: Unutilized
Comment: 4172 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. S6250
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340083
Status: Unutilized
Comment: 22,125 sq. ft., presence of asbestos/lead paint, most recent use—armory, off-site use only

Bldg. S6268
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340085
Status: Unutilized
Comment: 840 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Georgia

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor

Bldg. 1252, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only

Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–

Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

8 Bldgs.
Fort Benning 4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only

Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only

Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only

Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only

Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only

Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only

Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only

Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg. off-site use only

Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only

Bldg. 92
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2445
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 4232
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199930119
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 492
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint, off-site use only

Bldg. 880
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only

Bldg. 1370
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2288
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2290
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only

Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin.

Bldg. 2505
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only.

Bldg. 2508
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only.

Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only.

Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only.

Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only.

Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only.

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only.

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only.

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only.

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldgs. T–1005, T–1006, T–1007
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030086
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1015, T–1016, T–1017
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030087
Status: Excess
Comment: 7496 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1018, T–1019
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030088
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1020, T–1021
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030089
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1022
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030090
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—supply center, off-site use only

Bldg. T–1027
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030091
Status: Excess
Comment: 9024 sq ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1028
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030092
Status: Excess
Comment: 7496 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1035, T–1036, T–1037
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030093
Status: Excess
Comment: 1626 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1038, T–1039
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030094
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1040, T–1042
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030095
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1086, T–1087, T–1088
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030096
Status: Excess

Comment: 7680 sq. ft., poor condition, most recent use—storage, off-site use only
Bldg. 223
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040044
Status: Unutilized
Comment: 21,556 sq. ft., most recent use—gen. purpose
Bldg. 228
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040045
Status: Unutilized
Comment: 20,220 sq. ft., most recent use—gen. purpose
Bldg. 2051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040046
Status: Unutilized
Comment: 6077 sq. ft., most recent use—storage
Bldg. 2053
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040047
Status: Unutilized
Comment: 14,520 sq. ft., most recent use—storage
Bldg. 2677
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040048
Status: Unutilized
Comment: 19,326 sq. ft., most recent use—maint. shop
Bldg. 02301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140075
Status: Unutilized
Comment: 8484 sq. ft., needs major rehab, potential asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
Comment: 10,813 sq. ft., off-site use only
Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042
Status: Excess
Comment: 1440 sq. ft., off-site use only
Bldg. T0251
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230043
Status: Excess
Comment: 27,254 sq. ft., off-site use only
Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
Comment: 5220 sq. ft. each, off-site use only
Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
Comment: 5220 sq. ft., off-site use only
Bldg. T0470
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230046
Status: Excess
Comment: 27,254 sq. ft., off-site use only
Bldg. T1191
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230047
Status: Excess
Comment: 9386 sq. ft., off-site use only
Bldg. T1192
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230048
Status: Excess
Comment: 3992 sq. ft., off-site use only
Bldgs. 00064, 00065
Camp Frank D. Merrill
Dahlonega Co: Lumpkin GA 30597–
Landholding Agency: Army
Property Number: 21200330108
Status: Unutilized
Comment: 648 sq. ft. each, concrete block, most recent use—water support treatment bldg., off-site use only

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations
Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only
Bldg. 06508
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220106
Status: Unutilized
Comment: 1140 sq. ft., most recent use—office, off-site use only

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only
Bldg. AR112
Sheridan Reserve
Arlington Heights Co: IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comment: 1000 sq. ft., off-site use only

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Maryland

Bldg. 2837
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120101
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 00313
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120104
Status: Unutilized
Comment: 983 sq. ft., most recent use—storage, off-site use only
Bldg. 00340
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120105
Status: Unutilized
Comment: 384 sq. ft., most recent use—storage, off-site use only
Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
Comment: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only
Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
Comment: 160 sq. ft., poor condition, most recent use—shelter, off-site use only
Bldg. E3728
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120109
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, most recent use—testing facility, off-site use only

Bldg. 05213
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120112
Status: Unutilized
Comment: 200 sq .ft., poor condition, most recent use—storage, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comment: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comment: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comment: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 503
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130092
Status: Unutilized
Comment: 14,244 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 8481
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130098
Status: Unutilized
Comment: 7718 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comment: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 229
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140079
Status: Unutilized
Comment: 2250 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 287
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140080
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
Comment: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

Bldg. 949
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140083
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 979
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140084
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 00546
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220109
Status: Unutilized
Comment: 5659 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00939
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220110
Status: Unutilized
Comment: 8185 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 02207
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220112
Status: Unutilized
Comment: 6855 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 02271
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220114
Status: Unutilized
Comment: 10,080 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 04675
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220115
Status: Unutilized
Comment: 1710 sq. ft., possible asbestos/lead paint, most recent use—rental store, off-site use only

Bldg. 2050A
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230051
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
Comment: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2217
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230055
Status: Unutilized
Comment: 7710 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin/warehouse, off-site use only

Bldg. 2253
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230056
Status: Unutilized
Comment: 18,912 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. 2275
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230057
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 2276
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230058
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 2273
Ft. George G. Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200320105
Status: Unutilized
Comment: 54 sq. ft., most recent use—storage, off-site use only

Bldg. 2456

Ft. George G. Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200320106
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—clinic, off-site use only

Bldg. 00375
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320107
Status: Unutilized
Comment: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0384A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320108
Status: Unutilized
Comment: 130 sq. ft., most recent use—ordnance facility, off-site use only

Bldg. 00385
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320109
Status: Unutilized
Comment: 5517 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320110
Status: Unutilized
Comment: 944 sq. ft., off-site use only

Bldg. 00442
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320111
Status: Unutilized
Comment: 900 sq. ft., most recent use—storage, off-site use only

Bldg. 00443
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320112
Status: Unutilized
Comment: 1488 sq. ft., off-site use only

Bldg. 00523
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320113
Status: Unutilized
Comment: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 00524
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320114
Status: Unutilized
Comment: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 0645A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320115
Status: Unutilized
Comment: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00649
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320116
Status: Unutilized
Comment: 1079 sq. ft., most recent use—storage, off-site use only

Bldg. 00650
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320117
Status: Unutilized
Comment: 4215 sq. ft., most recent use—storage, off-site use only

Bldgs. 00654, 00655
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320118
Status: Unutilized
Comment: 1110 sq. ft., off-site use only

Bldg. 00657
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320119
Status: Unutilized
Comment: 1048 sq. ft., most recent use—bunker, off-site use only

Bldgs. 00679, 00705
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320120
Status: Unutilized
Comment: 119/100 sq. ft., most recent use—safety shelter, off-site use only

Bldg. 0700B
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320121
Status: Unutilized
Comment: 505 sq. ft., off-site use only

Bldg. 00741
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320122
Status: Unutilized
Comment: 894 sq. ft., most recent use—storage, off-site use only

Bldg. 00768
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320123
Status: Unutilized
Comment: 97 sq. ft., most recent use—observation bldg., off-site use only

Bldg. 00786
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320124
Status: Unutilized
Comment: 1600 sq. ft., most recent use—ordnance bldg., off-site use only

Bldgs. 00900, 00911
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320125
Status: Unutilized
Comment: 225/112 sq. ft., most recent use—safety shelter, off-site use only

Bldg. 01101
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320126
Status: Unutilized
Comment: 6435 sq. ft., most recent use—storage, off-site use only

Bldg. 1102A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320127
Status: Unutilized
Comment: 1416 sq. ft., most recent use—storage, off-site use only

Bldg. 01113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320128
Status: Unutilized
Comment: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320129
Status: Unutilized
Comment: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldgs. 02373, 02378
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320130
Status: Unutilized
Comment: 8359 sq. ft., most recent use—training, off-site use only

Bldg. 03328
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320131
Status: Unutilized
Comment: 1628 sq. ft., most recent use—exchange, off-site use only

Bldg. 03512
Aberdeen Proving Grounds
Aberdeen Co: Harford MD
Landholding Agency: Army
Property Number: 21200320132
Status: Unutilized
Comment: 10,944 sq. ft., most recent use—storage, off-site use only

Bldg. 03558
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320133
Status: Unutilized
Comment: 18,000 sq. ft., most recent use—storage, off-site use only

Bldgs. 05258, 05260
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–

Landholding Agency: Army
Property Number: 21200320135
Status: Unutilized
Comment: 10067 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320136
Status: Unutilized
Comment: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320137
Status: Unutilized
Comment: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E1387
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320138
Status: Unutilized
Comment: 433 sq. ft., most recent use—woodworking shop, off-site use only

Bldg. E1415
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320139
Status: Unutilized
Comment: 730 sq. ft., most recent use—lab, off-site use only

Bldg. E1416
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320140
Status: Unutilized
Comment: 120 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1420, E1429
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320141
Status: Unutilized
Comment: 220/150 sq. ft., most recent use—test range/storage, off-site use only

6 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E1432, E1444, E1446, E1447, E1449, E1453
Landholding Agency: Army
Property Number: 21200320142
Status: Unutilized
Comment: various sq. ft., most recent use—range shelter, off-site use only

Bldgs. E1481, E1482
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320143
Status: Unutilized
Comment: 100 sq. ft., most recent use—observation bldg., off-site use only

Bldg. E1484
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320144
Status: Unutilized
Comment: 256 sq. ft., most recent use—admin., off-site use only

Bldgs. E2363, E2610
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320145
Status: Unutilized
Comment: 138/133 sq. ft., most recent use—storage, off-site use only

Bldgs. E3328, E3540, E4261
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320146
Status: Unutilized
Comment: various sq. ft., most recent use—test facilities, off-site use only

Bldg. E5108
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320147
Status: Unutilized
Comment: 5155 sq. ft., most recent use—recreation center, off-site use only

Bldg. E5483
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320148
Status: Unutilized
Comment: 2140 sq. ft., most recent use—vehicle storage, off-site use only

Bldg. E5602
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320149
Status: Unutilized
Comment: 238 sq. ft., most recent use—storage, off-site use only

Bldg. E5645
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320150
Status: Unutilized
Comment: 548 sq. ft., most recent use—storage, off-site use only

Bldg. E7228
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320151
Status: Unutilized
Comment: 441 sq. ft., off-site use only

Bldg. 2728
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200330109
Status: Unutilized
Comment: 4072 sq. ft., most recent use—storage, off-site use only

Bldgs. 00264, 00265
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330110
Status: Unutilized
Comment: 1322/1048 sq. ft., needs, rehab, most recent use—storage, off-site use only

Bldg. 00435
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330111
Status: Unutilized
Comment: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330112
Status: Unutilized
Comment: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldgs. 00458, 00464
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330113
Status: Unutilized
Comment: 900/2647 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330114
Status: Unutilized
Comment: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldgs. 00506, 00509, 00605
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330115
Status: Unutilized
Comment: 38,690/1137 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00724
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330116
Status: Unutilized
Comment: off-site use only

Bldgs. 00728, 00784
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330117
Status: Unutilized
Comment: 2100/232 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00914
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330118
Status: Unutilized
Comment: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330119
Status: Unutilized
Comment: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00931
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330120
Status: Unutilized
Comment: 1400 sq. ft., needs rehab, off-site use only

Bldg. 01050
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330121
Status: Unutilized
Comment: 1050 sq. ft., needs rehab, most recent use—transmitter bldg., off-site use only

Bldg. 1101A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330122
Status: Unutilized
Comment: 1800 sq. ft., needs rehab, most recent use—ordnance bldg., off-site use only

Bldg. 01169
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330123
Status: Unutilized
Comment: 440 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 01170
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330124
Status: Unutilized
Comment: 600 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. 01171
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330125
Status: Unutilized
Comment: 2412 sq. ft., needs rehab, most recent use—changing facility, off-site use only

Bldg. 01189
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330126
Status: Unutilized
Comment: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330127
Status: Unutilized
Comment: needs rehab, most recent use—observation tower, off-site use only

Bldgs. E1418, E2148
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330128
Status: Unutilized
Comment: 836/1092 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E1486
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330129
Status: Unutilized
Comment: 388 sq. ft., needs rehab, most recent use—ordnance facility, off-site use only

Bldg. E2314
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330130
Status: Unutilized
Comment: 11,279 sq. ft., needs rehab, most recent use—high explosive bldg., off-site use only

Bldgs. 02350, 02357
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330131
Status: Unutilized
Comment: 163/920 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E2350A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330132
Status: Unutilized
Comment: 325 sq. ft., needs rehab, most recent use—oil storage, off-site use only

Bldg. 2456
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E3175
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330134
Status: Unutilized
Comment: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E3224, E3228, E3230, E3232, E3234
Landholding Agency: Army
Property Number: 21200330135
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330136
Status: Unutilized
Comment: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldgs. E3265, E3266
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330137
Status: Unutilized
Comment: 5509/5397 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldgs. E3269, E3270
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330138
Status: Unutilized
Comment: 200/1200 sq. ft., needs rehab, most recent use—flam. storage, off-site use only

Bldg. E3300
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330139
Status: Unutilized
Comment: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3320
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330140
Status: Unutilized
Comment: 50,750 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E3322
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330141
Status: Unutilized
Comment: 5906 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3326
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330142
Status: Unutilized
Comment: 2184 sq. ft., needs rehab, most recent use—admin., off-site use only

5 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E3329, E3334, E3344, E3350, E3370
Landholding Agency: Army
Property Number: 21200330143
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3335
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330144
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330145
Status: Unutilized
Comment: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3514
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330146

Status: Unutilized
Comment: 4416 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. E3517, E3525
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330147
Status: Unutilized
Comment: 1001/2175 sq. ft., needs rehab, most recent use—nonmet matl facility, off-site use only

Bldg. E3542
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330148
Status: Unutilized
Comment: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldgs. 03554, 03556
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330149
Status: Unutilized
Comment: 18,000/9000 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3863, E3864, E4415
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330150
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—admin., off-site use only

Bldg. E4420
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330151
Status: Unutilized
Comment: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

Bldg. E4733
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330152
Status: Unutilized
Comment: 2252 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E4734
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330153
Status: Unutilized
Comment: 1114 sq. ft., needs rehab, most recent use—private club, off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E5005, E5049, E5050, E5051
Landholding Agency: Army
Property Number: 21200330154
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330155
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E5107, E5181, E5182, E5269
Landholding Agency: Army
Property Number: 21200330156
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldgs. E5329, E5374
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330157
Status: Unutilized
Comment: 1001/308 sq. ft., needs rehab, most recent use—fuel POL bldg., off-site use only

Bldgs. E5425, 05426
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330158
Status: Unutilized
Comment: 1363/3888 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05446
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330159
Status: Unutilized
Comment: 1991 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 05447
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330160
Status: Unutilized
Comment: 2464 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. 05448, 05449
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330161
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330162
Status: Unutilized
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330163
Status: Unutilized
Comment: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330164
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05456, 05459, 05460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330165
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted bldg., off-site use only

Bldgs. 05457, 05458
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330166
Status: Unutilized
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330167
Status: Unutilized
Comment: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330168
Status: Unutilized
Comment: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330169
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldgs. E5648, E5697
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330170
Status: Unutilized
Comment: 6802/2595 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E5654
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330171
Status: Unutilized
Comment: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5779
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330172
Status: Unutilized
Comment: 174 sq. ft., needs rehab, most recent use—wash rack bldg., off-site use only

Bldgs. E5782, E5880
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–

Landholding Agency: Army
Property Number: 21200330173
Status: Unutilized
Comment: 510/1528 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5854
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330174
Status: Unutilized
Comment: 5166 sq. ft., needs rehab; most recent use—eng/MTN bldg., off-site use only

Bldgs. E5870, E5890
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330175
Status: Unutilized
Comment: 1192/11,279 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330176
Status: Unutilized
Comment: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330177
Status: Unutilized
Comment: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330178
Status: Unutilized
Comment: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E7407, E7408
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330179
Status: Unutilized
Comment: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. E7500
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330180
Status: Unutilized
Comment: 256 sq. ft., needs rehab, most recent use—changing bldg., off-site use only

Bldgs. E7501, E7502
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330181
Status: Unutilized
Comment: 256/77 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7931
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330182
Status: Unutilized
Comment: needs rehab, most recent use—sewer treatment, off-site use only

Missouri

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Jersey

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200230062
Status: Excess
Comment: 107 sq. ft., most recent use—security, off-site use only

New York

Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130129
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—housing mnt., off-site use only

Bldg. T–201
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130131
Status: Unutilized
Comment: 2305 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130132
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–252
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–253, T–256, T–257
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130134
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–271, T–272, T–273
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130135
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–274
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130136
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, most recent use—BN HQ, off-site use only

Bldgs. T–276, T–277, T–278
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130137
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–1030
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130139
Status: Unutilized
Comment: 15606 sq. ft., needs rehab, most recent use—simulator bldg., off-site use only

Bldg. P–2159
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130140
Status: Unutilized
Comment: 1948 sq. ft., needs rehab, most recent use—waste/water treatment, off-site use only

Bldg. T–2443
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130142
Status: Unutilized
Comment: 793 sq. ft., needs rehab, most recent use—vet facility, off-site use only

Bldgs. T–401, T–403
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210042
Status: Unutilized
Comment: 2305/2284 sq. ft., needs repair, most recent use—battalion hq bldg., off-site use only

Bldgs. T–404, T–406, T–407
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210043
Status: Unutilized
Comment: 2000/1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–430
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210044
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–431, T–432, T–433, T–434
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210045
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–435
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210046
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–437, T–438
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210047
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–439, T–460
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210048
Status: Unutilized
Comment: 2588/2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–461, T–462, T–463, T–464
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210049
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–465
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210050
Status: Unutilized
Comment: 2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–405, T–408
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210051
Status: Unutilized
Comment: 1296 sq. ft., needs repair, most recent use—storage, off-site use only

6 Bldgs.
Fort Drum
T–410, T–411, T–412, T–416, T–417, T–418

Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210052
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–421, T–422
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210053
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–423, T–424
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210054
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

7 Bldgs.
Fort Drum
T–441, T–442, T–443, T–444, T–446–T–448
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210055
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

6 Bldgs.
Fort Drum
T–451, T–452, T–453, T–454, T–456, T–458
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210056
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

5 Bldgs.
Fort Drum
T–471, T–472, T–473, T–474, T–477
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210057
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–420, T–445, T–470
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210058
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldgs. T–440, T–450
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210059
Status: Unutilized
Comment: 2360 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldg. T–478
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210060
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—classroom, off-site use only

5 Bldgs.
Orangeburg USARC
#206, 207, 208, 218, 223
Orangeburg Co: Rockland NY 10962–2209
Landholding Agency: Army
Property Number: 21200310061
Status: Unutilized
Comment: various sq. ft., need major repairs, presence of lead paint, most recent use—admin/storage, off-site use only

North Carolina

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Landholding Agency: Army
Property Number: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/ metal storage shed, needs major repair, presence of asbestos/lead paint, off-site use only

Oklahoma

Bldg. T–838
Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954
Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–3325
Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T1652
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015
Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158

Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only
Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comment: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only
Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comment: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comment: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only
Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3043
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120130
Status: Unutilized
Comment: 80 sq. ft., possible asbestos/lead paint, most recent use—guard shack, off-site use only

South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.
Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.
Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage
Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200030109
Status: Unutilized
Comment: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

Texas

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only
Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only
Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only
Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only
Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only
Bldg. 1281
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110091
Status: Unutilized
Comment: 25,027 sq. ft., most recent use—cold storage, off-site use only
Bldg. 7133
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110095
Status: Unutilized
Comment: 11,650 sq. ft., most recent use—storage, off-site use only
Bldg. 7136
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110096
Status: Unutilized
Comment: 11,755 sq. ft., most recent use—vet facility, off-site use only
Bldg. 7146
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110097
Status: Unutilized
Comment: most recent use—oil storage, off-site use only
Bldg. 7147
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110098
Status: Unutilized
Comment: most recent use—oil storage, off-site use only
Bldg. 7153
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110099
Status: Unutilized
Comment: 11,924 sq. ft., most recent use—bowling center, off-site use only
Bldg. 7162
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110100
Status: Unutilized
Comment: 3956 sq. ft., most recent use—development center, off-site use only
Bldg. 11116
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army

Property Number: 21200110101
Status: Unutilized
Comment: 20,100 sq. ft., most recent use—storage, off-site use only

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200220132
Status: Unutilized
Comment: 8855 sq. ft., presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. T5900
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220133
Status: Excess
Comment: 9876 sq. ft., possible lead paint, most recent use—theater/training bldg., off-site use only

Bldgs. 107, 108
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220136
Status: Unutilized
Comment: 13,319 & 28,051 sq. ft., most recent use—admin., off-site use only

Bldg. 120
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220137
Status: Unutilized
Comment: 1450 sq. ft.. most recent use—dental clinic, off-site use only

Bldg. 134
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220138
Status: Unutilized
Comment: 16,114 sq. ft., most recent use—auditorium, off-site use only

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comment: 2160 sq. ft., most recent use—admin., off-site use only

Bldg. 56402
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220144
Status: Unutilized
Comment: 2680 sq. ft., most recent use—recreation center, off-site use only

Bldgs. 56403, 56405
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220145
Status: Unutilized
Comment: 480 sq. ft., most recent use—shower, off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comment: 1120 sq. ft.. most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56630, 56631
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220149
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comment: 1306 sq. ft., most recent use—shower, off-site use only

Bldgs. 56750, 56751
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220153
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldg. P6202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220156
Status: Excess
Comment: 1479 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—officer's family quarters, off-site use only

Bldg. P6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220157
Status: Excess
Comment: 1381 sq. ft.. presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Bldg. P6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220158
Status: Excess
Comment: 1454 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Bldgs. P6220, P6222
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330197
Status: Unutilized
Comment: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330198
Status: Unutilized
Comment: 384 sq. ft., most recent use—carport/storage, off-site use only

Virginia

Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940047
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only

Bldg. 1559
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only

Bldg. T0058
Fort Monroe
Stillwell Dr.
Ft. Monroe Co: VA
Landholding Agency: Army

Property Number: 21200310057
Status: Excess
Comment: 7875 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 18
Defense Supply Center
Richmond Co: Chesterfield VA 23875–
Landholding Agency: Army
Property Number: 21200320174
Status: Unutilized
Comment: 6962 sq. ft., most recent use—office/warehouse, off-site use only

Bldg. T–707
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200330199
Status: Unutilized
Comment: 3763 sq. ft., most recent use—chapel, off-site use only

Washington

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft. and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275

Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Land (by State)

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

Ohio

Land
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200340094
Status: Excess
Comment: 11 acres, railroad access

South Carolina

One Acre
Fort Jackson
Columbia Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200110089
Status: Underutilized
Comment: approx. 1 acre

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Bldgs. 1001–1006, 1106–1107
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21200210027
Status: Unutilized
Comment: approx. 9000 sq. ft., poor condition, lead paint present, most recent use—warehouses, off-site use only

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comment: 800 sq. ft., most recent use—office, off-site use only

Bldg. 24220
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200320093
Status: Unutilized
Comment: 2128 sq. ft., needs repair, most recent use—scout bldg., off-site use only

Alaska

Bldgs. 345, 347
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320094
Status: Excess
Comment: 9456 sq. ft., needs rehab, off-site use only

Bldgs. 354, 357, 359
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320095
Status: Excess
Comment: 9456 sq. ft., needs rehab, off-site use only

Bldg. 368
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320096
Status: Excess
Comment: 12,642 sq. ft., needs rehab, off-site use only

Bldg. 370
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320097
Status: Excess
Comment: 9456 sq. ft., needs rehab, off-site use only

Arizona

Bldg. 00701
Yuma Proving Ground
Yuma Co: AZ 85365–9498
Landholding Agency: Army
Property Number: 21200340077
Status: Unutilized
Comment: 1548 sq. ft., needs repair, possible asbestos/lead paint, most recent use—police station, off-site use only

Bldg. 00702
Yuma Proving Ground
Yuma Co: AZ 85365–9498
Landholding Agency: Army
Property Number: 21200340078
Status: Unutilized
Comment: 3137 sq. ft., needs repair, possible asbestos/lead paint, most recent use—offices, off-site use only

Colorado

Bldg. T–203
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340079
Status: Unutilized
Comment: 1628 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–223 thru T–227
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340081
Status: Unutilized
Comment: 9000 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. S6222
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340082
Status: Unutilized
Comment: 19,225 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. S6264
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340084
Status: Unutilized
Comment: 19,499 sq. ft., most recent use—office, off-site use only

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only

Bldg. 2410
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140076
Status: Unutilized
Comment: 8480 sq. ft., needs rehab, potential asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 20802
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200210078
Status: Unutilized
Comment: 740 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–920
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200240083
Status: Excess
Comment: 13,337 sq. ft., most recent use—office, off-site use only

Bldgs. 00960, 00961, 00963
Fort Benning
Ft. Benning Co: Chattahoochee GA
Landholding Agency: Army
Property Number: 21200330107
Status: Unutilized
Comment: 11,110 sq. ft., most recent use—housing, off-site use only

Indiana

Bldg. 301
Fort Benjamin Harrison
Indianapolis Co: Marion IN 45216–
Landholding Agency: Army
Property Number: 21200320098
Status: Unutilized
Comment: 1564 sq. ft., possible asbestos/lead paint, most recent use—storage shed, off-site use only

Bldg. 302
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320099
Status: Unutilized
Comment: 400 sq. ft., possible asbestos/lead paint, most recent use—switch station, off-site use only

Bldg. 303
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320100
Status: Unutilized
Comment: 462 sq. ft., possible asbestos/lead paint, most recent use—heat plant bldg., off-site use only

Bldg. 304
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320101
Status: Unutilized
Comment: 896 sq. ft., possible asbestos/lead paint, most recent use—heat plant bldg., off-site use only

Bldg. 334
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320102
Status: Unutilized
Comment: 652 sq. ft., possible asbestos/lead paint, off-site use only

Bldg. 337
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320103
Status: Unutilized
Comment: 675 sq. ft., possible asbestos/lead paint, off-site use only

Maryland

Bldg. 2282C
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230059
Status: Unutilized
Comment: 46 sq. ft., needs rehab, most recent use—sentry tower, off-site use only

Bldg. 05257
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320134
Status: Unutilized
Comment: 10067 sq. ft., most recent use—maint shop, off-site use only

Missouri

Bldg. 2172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040059
Status: Unutilized
Comment: 2892 sq. ft., most recent use—operations, off-site use only

Bldg. 1230
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340087
Status: Unutilized
Comment: 9160 sq. ft., most recent use—training, off-site use only

Bldg. 1621
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340088
Status: Unutilized
Comment: 2400 sq. ft., most recent use—exchange branch, off-site use only

Bldg. 03289
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340089
Status: Unutilized
Comment: 8120 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 03291
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340090
Status: Unutilized
Comment: 3108 sq. ft., presence of lead paint, most recent use—motor repair shop, off-site use only

Bldg. 6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340091
Status: Unutilized
Comment: 4000 sq. ft., most recent use—storage, off-site use only

Bldg. 9000
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340092
Status: Unutilized
Comment: 1440 sq. ft., most recent use—welcome center, off-site use only

Bldg. 10201
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340093
Status: Unutilized
Comment: 1200 sq. ft., most recent use—storage, off-site use only

New York

Bldgs. 1511–1518
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320160
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1523–1526
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320161
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1704–1705, 1721–1722
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320162
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldg. 1723
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320163
Status: Unutilized
Comment: 2400 sq. ft., needs rehab, most recent use—day room, off-site use only

Bldgs. 1706–1709
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320164
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1731–1735
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320165
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

North Carolina

Bldgs. A2245, A2345
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240084
Status: Excess
Comment: 3444 sq. ft. each, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. A2544
Fort Bragg
Ft. Bragg Co: Cumberland NC
Landholding Agency: Army
Property Number: 21200240085
Status: Excess
Comment: 4000 sq. ft., possible asbestos/lead paint, most recent use—admin. facility, off-site use only

Bldg. D2826
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240086
Status: Excess
Comment: 41,520 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comment: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

103 Bldgs.
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Location: WS001–WS02A, PE001–PE031, 002F1–02F36, 00651, 1101, DT001–DT035, DT052–DT056, 09051
Landholding Agency: Army
Property Number: 21200240088
Status: Excess
Comment: multi-use structures, various sq ft., possible asbestos/lead paint, off-site use only

Pennsylvania

Bldg. 00001
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330183
Status: Unutilized
Comment: 225,400 sq. ft., needs rehab, most recent use—admin/storage/misc, off-site use only

Bldg. 00002
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330184
Status: Unutilized
Comment: 44,800 sq. ft., needs rehab, most recent use—shop/storage, off-site use only

Bldgs. 00004, 00005, 00006
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330185
Status: Unutilized
Comment: 201,600 sq. ft. each, needs rehab, most recent use—warehouse/storage, off-site use only

Bldg. 00013
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330186
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, off-site use only

Bldg. 00024

Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330187
Status: Unutilized
Comment: 3100 sq. ft., needs rehab, most recent use—eng/housing mnt, off-site use only

Bldg. 00025
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330188
Status: Unutilized
Comment: 2640 sq. ft., needs rehab, most recent use—salt shed, off-site use only

Bldg. 00028
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330189
Status: Unutilized
Comment: 12,352 sq. ft., needs rehab, most recent use—vehicle maint shop, off-site use only

Bldg. 00064
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330190
Status: Unutilized
Comment: 900 sq. ft., needs rehab, off-site use only

Bldg. 00068
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330191
Status: Unutilized
Comment: 717 sq. ft., needs rehab, off-site use only

Bldg. 00078
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330192
Status: Unutilized
Comment: 32 sq. ft., needs rehab, off-site use only

Bldg. 00095
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330193
Status: Unutilized
Comment: 480 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00096
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330194
Status: Unutilized
Comment: 1824 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00097
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330195
Status: Unutilized
Comment: most recent use—open storage, off-site use only

Bldg. 02010
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330196
Status: Unutilized
Comment: 288 sq. ft., needs rehab, off-site use only

Tennessee

Bldgs. 01551, 01552
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200230076
Status: Unutilized
Comment: 2052 sq. ft.

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comment: 8056 & 10,500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comment: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comment: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only

Virginia

Bldg. T2827
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200320172
Status: Unutilized
Comment: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200320173
Status: Unutilized
Comment: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Washington

Bldg. 03272
Fort Lewis
Tacoma Co: Pierce WA 98335–
Landholding Agency: Army
Property Number: 21200220160
Status: Unutilized
Comment: 21,373 sq. ft., most recent use—hangar, off-site use only

Bldg. 04180
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240091
Status: Excess
Comment: 72 sq. ft., most recent use—guard shack, off-site use only

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comment: 82 sq. ft., most recent use—guard shack, off-site use only

Bldgs. 9003, 9517
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240093
Status: Excess
Comment: 80 and 82 sq. ft., most recent use—guard shack, off-site use only

Unsuitable Properties

Buildings (by State)

Alabama

72 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898
Landholding Agency: Army
Property Number: 21200040001–21200040012, 21200120018, 21200220003–21200220004, 21200240007–21200240023, 21200330001–2120330004, 21200340011–21200340012, 21200340095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

21 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219740006, 21200010010, 21200040013, 21200220001, 21200240001–21200240004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 28152
Rucker
Hartford Co: Geneva AL 36344
Landholding Agency: Army
Property Number: 21200230002
Status: Unutilized
Reason: Extensive deterioration

Alaska

14 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002, 219810007, 21199920001, 21200320005, 21200340007–21200340010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Floodway (Some are extensively deteriorated)

24 Bldgs., Fort Richardson
Ft. Richardson Co: AK 99505
Landholding Agency: Army

Property Number: 21200320001–21200320004, 21200340001–21200340006
Status: Excess
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120177–219120181
Status: Unutilized
Reason: Secured Area

9 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140002–21200140010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 15348, 15333
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200240024, 21200320005
Status: Excess
Reason: Extensive deterioration

Arkansas

189 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200110001-21200110017, 21200140011–21200140014
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

40 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030, 21200330007
Status: Unutilized
Reason: Secured Area

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036, 21199940052–21199940056
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

449 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area; Extensive deterioration

27 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051, 21200130005
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 00720
Fort Hunter Liggett
Jolon Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 21200330006
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

7 Bldgs.
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830024, 21200130006–21200130011
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00087, 00088, 00096
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

154 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905
Landholding Agency: Army
Property Number: 219220269, 219410050–219410051, 219410071–219410072, 219410100, 219410109, 219630044–219630063, 219640011–219640024, 219830038–219830067, 21199910012, 21200210061–21200210073, 21200220007–21200220010, 21200230007–21200230015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2872, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220337
Status: Unutilized
Reason: Detached lavatory

40 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320, 219720017–219720019, 219810028, 219810030, 219810035, 219830073, 219830076, 21199930031-21199930037, 21200030023–21200030027,

21200330008–21200330010, 21200330200, 21200410001–21200410010
Status: Unutilized
Reason: Extensive deterioration

23 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21200140016, 21200220011–21200220012, 21200230005, 21200340013–21200340016
Status: Unutilized
Reason: Extensive deterioration; Secured Area

Bldg. P8121, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060
Status: Unutilized
Reason: Extensive Deterioration

3 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219630034, 219830068, 21200120042
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004
Status: Unutilized
Reason: Secured Area

Hawaii

16 Bldgs.
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837, 219030361, 21200410012
Status: Unutilized
Reason: Secured Area (Most are extensively deteriorated)

4 Bldgs., Fort Shafter
Honolulu Co: HI 96819
Landholding Agency: Army
Property Number: 21200240034, 21200310001
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs
Kipapa Ammo Storage Site 20A/B, 21A/B, 22B, 23A/B, 24A/B, 25A/B
Waipahu Co: Honolulu HI 96797
Landholding Agency: Army
Property Number: 21200410011
Status: Unutilized
Reason: Secured Area

Illinois

13 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219210100, 219620427, 219620428, 21200140043–21200140046
Status: Unutilized
Reason: Some are in a secured area; Some are extensively deteriorated; Some are within 2000 ft. of flammable or explosive material

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area, Floodway; Extensive deterioration

Bldgs. 111, 145
Col. Schulstad Memorial USARC
Arlington Heights Co: Cook IL 60005
Landholding Agency: Army
Property Number: 21200320012
Status: Unutilized
Reason: Extensive deterioration

Indiana

173 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079-219530096, 219740021–219740026, 219820031–219820032, 21199920063, 21200330015–21200330016
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 300
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Landholding Agency: Army
Property Number: 21200320011
Status: Unutilized
Reason: Contamination

Iowa

107 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219610414, 219740027, 21200220022, 21200230019–21200230023, 21200330012–21200330014, 21200340017
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Numbers: 219620518–219620638
Status: Unutilized
Reason: Secured Area

Bldg. P–417
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 219740029
Status: Unutilized
Reason: Extensive deterioration; Sewage pump station

Bldg. 00166
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200310007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00475
Ft. Leavenworth
Ft. Leavenworth Co: KS 66027
Landholding Agency: Army
Property Number: 21200410013
Status: Unutilized
Reason: Secured Area

Kentucky

Bldg. 126
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

476 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200130026–21200130029, 21200220030–21200220055, 21200240035–21200240045, 21200320013–21200320014, 21200340018
Status: Unutilized
Reason: Extensive deterioration

44 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110030–21200110049, 21200140048, 21200140053, 21200220029, 21200230029–21200230030, 21200320018, 21200330017–21200330022
Status: Unutilized
Reason: Extensive deterioration

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

38 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21199920078, 21199940074, 21199940075, 21200120058, 21200130030–21200130043
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway)

Maryland

73 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011417, 219012610, 219012637–219012642, 219012658–219012662, 219013773, 219014711, 219610489–219610490, 219730077, 219810070–219810121, 219820090–219820096, 21200120059–21200120060, 21200330024–21200330025, 21200410917–21200410033
Status: Unutilized
Reason: (Most are in a secured area) (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)

77 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219710186, 219740068–219740076, 219810065, 21199910019, 21199940084, 21200140059–21200140060, 21200240046–21200240053, 21200310017, 21200330023, 21200410014–21200410016
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Woodstock Military Rsv
Granite Co: Baltimore MD 22163
Landholding Agency: Army
Property Number: 21200130044–21200130052
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00211
Curtis Bay Ordnance Depot
Baltimore Co: MD 21226
Landholding Agency: Army
Property Number: 21200320024
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219310020
Status: Unutilized
Reason: Secured Area

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Devens RFTA
Devens Co: MA 01432–4429
Landholding Agency: Army
Property Number: 21200340019–21200340021
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration

31 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062, 21200410036–21200410042
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Selfridge ANG Base
Selfridge Co: MI 48045
Landholding Agency: Army
Property Number: 21199930059, 21199940089–21199940093, 21200110052–21200110055
Status: Unutilized
Reason: Secured Area

Bldgs. 08625, 8639
Poxin USAR Center
Southfield Co: Oakland MI 48034
Landholding Agency: Army
Property Number: 21200330026–21200330027
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Grayling Army Airfield
Grayling Co: Crawford MI 49739
Landholding Agency: Army
Property Number: 21200410034–21200410035
Status: Excess
Reason: Extensive deterioration

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198–219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

Missouri

83 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530136, 21199910023–21199910035, 21199920082, 21200030049
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

25 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430075, 21199910020–21199910021, 21200320025, 21200320030, 21200330028–21200330031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated)

Bldg. P4122
U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P4074, P4072, P4073
St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310019
Status: Unutilized
Reason: Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643
Status: Underutilized

Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

New Jersey

167 Bldgs.
Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740113–219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230071–21200230075, 21200330047–21200330063, 21200410043–21200410044
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated) (Some are in a floodway)

4 Bldgs., Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200330033–21200330036
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200330037–21200330046
Status: Unutilized
Reason: Extensive deterioration

New Mexico

39 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200410045–21200410049
Status: Excess
Reason: Secured Area

New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldgs. 12, 134
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099, 21199840068
Status: Unutilized
Reason: Extensive deterioration; Secured Area

13 Bldgs.
Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1716, 3014
U.S. Military Academy
West Point Co: NY 10996
Landholding Agency: Army
Property Number: 21200330064, 21200410050
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200340027–21200340029, 21200410051
Status: Unutilized
Reason: Extensive deterioration

North Carolina

120 Bldgs., Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620480, 219640074, 219710102–219710111, 219710224, 219810167, 21199930063–21199930066, 21200040035, 21200140064, 21200340030–21200340045, 21200410052–21200410058
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs.
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219810158–219810160, 21200330032
Status: Unutilized
Reason: Secured Area

North Dakota

Bldgs. 440, 455, 456, 3101, 3110
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

348 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199840069–21199840104, 21200240064
Status: Unutilized
Reason: Secured Area

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

Bldg. T091
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200340046
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219510023, 21200330065–21200330067
Status: Unutilized
Reason: Extensive deterioration

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

59 Bldgs., Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219640337, 219730122–219730128, 219740137, 219810178–219810193
Status: Unutilized
Reason: Extensive deterioration

35 Bldgs.
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 21199940109–21199940111, 21200110058–21200110063, 21200130072, 21200220072–21200220073, 21200330071–21200330076, 21200330201, 21200340047–21200340051, 21200410059–21200410061
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Bldg. 01006, Tobyhanna Army Depot
Tobyhanna Co: Monroe PA 18466
Landholding Agency: Army
Property Number: 21200330068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01003, C.E. Kelly Support Facility
Neville Island Co: Allegheny PA 15225
Landholding Agency: Army
Property Number: 21200330069
Status: Unutilized

Reason: Extensive deterioration

Puerto Rico

86 Bldgs., Fort Buchanan
Guaynabo Co: PR 00934
Landholding Agency: Army
Property Number: 21200330077–21200330092, 21200340052–21200340055
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Rhode Island

Bldg. 104, Army Aviation
North Kingstown Co: Washington RI 02852
Landholding Agency: Army
Property Number: 21200120064
Status: Unutilized
Reason: Extensive deterioration

South Carolina

40 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration

Tennessee

80 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219140613, 219440212–219440216, 219510025–219510028, 21200230035, 21200310038–21200310042, 21200320054–21200320074, 21200330093, 21200340056
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

16 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177, 219520034, 219740139, 21200410062–21200410066
Status: Unutilized
Reason: Secured Area

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

37 Bldgs.
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200220023, 21200230031–21200230034, 21200240065, 21200320046, 21200330094–21200330100
Status: Unutilized
Reason: Extensive deterioration

Texas

20 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

385 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548, 219610555–219610584, 219610635, 219620244–219620287, 219620827–219620837, 21200020054–21200020070, 21200340062–21200340073
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420315–219420327, 219430095–219430097
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

87 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044, 21200320079, 21200340057–21200340060
Status: Unutilized
Reason: Extensive deterioration

Starr Ranch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640186, 219640494
Status: Unutilized
Reason: Floodway

6 Bldgs.
Grand Prairie Reserve Complex
Grand Prairie Co: Tarrant TX 75050
Landholding Agency: Army
Property Number: 21200330101–21200330103, 21200340061
Status: Unutilized
Reason: Secured Area

Utah

Bldg. 4555
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012166
Status: Unutilized
Reason: Secured Area

Bldg. S–4301
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012751
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 21200120065
Status: Underutilized
Reason: Secured Area

51 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Virginia

346 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583,219011585,219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219220210–219220218, 219230100–219230103, 219240324, 219440219–219440225, 219510031–219510033, 219520037, 219520052, 219530194, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038, 21200240071–21200240072
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area (Some are extensively deteriorated)

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Latrine, detached structure

35 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210, 219330225–219330228, 219520062, 219610597, 219620497, 219620866–219620876, 219630115, 219740156, 219830208–219830210, 21199940129–21199940131, 21200030062, 21200040040, 21200110064, 21200120067, 21200230037, 21200240070, 21200340074

Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area)

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

84 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200110069, 21200240068–21200240069, 21200310045, 21200310058–21200310060, 21200410068–21200410077
Status: Unutilized
Reason: Secured Area; Extensive deterioration

11 Bldgs.
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910051, 21199920107, 21199940117–21199940120, 21200030063–21200030064, 21200130075–21200130077
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200210025–21200210026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 448, Fort Myer
Ft. Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 21200010069
Status: Underutilized
Reason: Extensive deterioration

9 Bldgs.
Fort Monroe
Ft. Monroe Co: VA 23651
Landholding Agency: Army
Property Number: 21200220076–21200220079, 21200310047, 21200410067
Status: Excess
Reason: Extensive deterioration

51 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092, 21200320080–21200320087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00723, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046
Status: Unutilized
Reason: Extensive deterioration

Washington

665 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910063–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097, 21200320091–21200320092, 21200330104–21200330106
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs. Renton USARC
00460, 00485, 00480, 00411
Renton Co: WA 980058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 19011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area) (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

7 Bldgs.
Fort McCoy
Ft. McCoy Co: Monroe WI 54656
Landholding Agency: Army
Property Number: 21200410078–21200410081
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: landlocked

New Jersey

Land
Armament Research Development & Eng. Center

Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co:.Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Training Land (3.764 acres
Camp Swift Military Rsv.
Bastrop Co: TX
Landholding Agency: Army
Property Number: 21200130073
Status: Unutilized
Reason: Secured Area

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

[FR Doc. 04–3545 Filed 2–19–04; 8:45 am]

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Federal Register

Friday,
February 20, 2004

Part III

Department of Homeland Security
Office of Personnel Management

5 CFR Chapter XCVII and Part 9701
Department of Homeland Security Human Resources Management System; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Chapter XCVII and Part 9701

RIN 3206–AK31/1601–AA–19

Department of Homeland Security Human Resources Management System

AGENCY: Department of Homeland Security; Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) and the Office of Personnel Management are issuing proposed regulations to establish a new human resources management system within DHS, as authorized by the Homeland Security Act of 2002. The affected subsystems include the systems governing basic pay, classification, performance management, labor relations, adverse actions (*e.g.*, disciplinary actions), and employee appeals. These changes are designed to ensure that DHS' human resources management system aligns with the Department's critical mission requirements and protects the civil service rights of its employees.

DATES: Comments must be received on or before March 22, 2004.

ADDRESSES: You may submit comments, identified by docket number DHS–2004–001 and/or RIN number 3206-AK31, by any of the following methods:

- E-Docket Web Site: *http://www.epa.gov/edocket.* Follow the instructions for submitting comments at that web site.
- Mail: DHS/OPM HR System Public Comments, P.O. Box 14474, Washington, DC 20044–4474.
- Hand delivery/Courier: OPM Resource Center, Room B469, Office of Personnel Management, 1900 E Street, NW., Washington, DC. Delivery must be made between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.
- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. The online e-docket system is DHS/OPM's preferred method for receiving comments. Mailed or hand-delivered comments must be in paper form. No mailed or hand-delivered comments in electronic form (CDs, floppy disk, or other media) will be accepted. All comments received, whether mailed, hand-delivered, or submitted online, will be posted without change or omission to the e-docket at: *http://www.epa.gov/edocket.* For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" and "Electronic Access and Filing" headings in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the e-docket to read background documents, submit comments, and read comments received, go to *http://www.epa.gov/edocket.* To read the hard-copy originals of mailed and hand-delivered comments, visit the OPM Resource Center, Room B469, Office of Personnel Management, 1900 E Street, NW., Washington, DC, between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: At OPM: Ronald P. Sanders, (202) 606–9150; at DHS: Melissa Allen, (202) 692–4272.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS or "the Department") and the Office of Personnel Management (OPM) are proposing to establish a new human resources (HR) management system within DHS under 5 U.S.C. 9701, as enacted by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296, November 25, 2002). The following information is intended to provide interested parties with relevant background material about (1) the Homeland Security Act, (2) the process used to design options for a new HR system, (3) a summary of the options developed and the review of those options by the DHS Human Resource Management System Senior Review Advisory Committee, (4) an evaluation of the design process, (5) a description of the proposed new HR system, and (6) an analysis of the costs and benefits of the proposed system.

The Homeland Security Act of 2002

Background

On November 25, 2002, President George W. Bush signed Public Law 107–296, the Homeland Security Act, which established DHS. On March 1, 2003, more than 20 organizations and functions previously assigned to other Federal agencies were merged officially into the new Department, making this the most significant reorganization in the executive branch of the Federal Government in more than 50 years. DHS was created with the overriding mission of protecting the Nation against further terrorist attacks. DHS analyzes threats and intelligence, guards our borders and airports, protects our critical infrastructure, coordinates the response of our Nation to emergencies, and implements other security measures. DHS also is committed to enhancing public services such as natural disaster assistance.

Authority To Establish a New HR System

In creating the new Department, Congress provided a historic opportunity to design a 21st century HR management system that is mission-centered, fair, effective, and flexible. One of the most important features of the Homeland Security Act was the authority granted jointly to the Secretary of Homeland Security and the Director of OPM under 5 U.S.C. 9701(a) to establish a new HR management system within the Department. By law, this authority is to be exercised through the issuance of regulations prescribed jointly by the Secretary and the Director.

Through this authority, DHS may establish a modern, flexible HR system to support its mission and improve employee and organizational performance. In granting this authority, Congress gave DHS flexibility to create an HR system that supports the agency's primary mission of protecting Americans from terrorist attack without compromising fundamental employee rights. In so doing, DHS has the authority to waive or modify the following provisions of title 5, United States Code:

- The rules governing performance appraisal systems established under chapter 43;
- The General Schedule classification system established under chapter 51;
- The pay systems for General Schedule employees, Federal Wage System employees, Senior Executive Service members, and certain other employees, as set forth in chapter 53;
- The labor relations system established under chapter 71;
- The rules governing adverse actions taken under chapter 75; and
- The rules governing the appeal of adverse actions and certain other actions under chapter 77.

The "section 9701 authority" does not extend to systems or rules established under an authority outside the above-listed title 5 chapters. (*See* 5 U.S.C. 9701(b) and (c).) For example, the authority does not reach to DHS employees covered by a basic pay system authorized by an authority outside title 5 (*e.g.*, Secret Service Uniformed Division officers, Coast Guard military personnel, Coast Guard

Academy faculty members, Transportation Security Administration employees, and employees of the DHS Emergency Preparedness and Response Directorate appointed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act).

In some cases, however, laws authorizing separate pay and classification systems for certain DHS employees not covered by title 5 provide considerable administrative discretion for modification of those systems. For example, the Transportation Security Administration (TSA) generally must adopt the system established for Federal Aviation Administration (FAA) employees, but the Administrator of TSA is authorized to modify that system consistent with 49 U.S.C. 40122. Similar discretionary authority applies to the pay systems for Stafford Act employees and to employees of the U.S. Coast Guard Academy. Thus, it is possible for DHS to extend a new pay system designed for employees currently covered by title 5 to TSA employees, Stafford Act employees, and/or employees of the Coast Guard Academy by administrative action. In contrast, the basic pay system established under the DC Code for Secret Service Uniformed Division (SSUD) officers cannot be altered administratively. Legislative action would be required to modify the basic pay system for SSUD officers.

Also, the section 9701 authority does not cover systems or rules in other title 5 chapters, such as the employment provisions in chapters 31 and 33, the premium pay provisions in chapter 55, or the retirement systems in chapters 83 and 84. However, section 881 of the Homeland Security Act does require DHS to review the pay and benefits plans applicable to its employees, identify possible disparities, and submit a plan for eliminating any unwarranted disparities. DHS provided a preliminary report to Congress on possible pay and benefits disparities on March 5, 2003, and continues to review these issues.

DHS' authority to modify or waive the six chapters of title 5 cited above (and the associated implementing regulations) is subject to certain limitations set forth in section 9701 of title 5 and elsewhere in the Homeland Security Act. These limitations are designed to ensure that fundamental merit system principles and employee protections are preserved. The limitations include the following:

- Any new or modified system must be consistent with the merit system principles in 5 U.S.C. 2301. Similarly, protections against prohibited personnel practices (*e.g.*, reprisal against whistleblowing or discrimination) remain in force.
- The section 9701 regulations may not modify regulations implementing nonwaivable laws.
- DHS may not modify the pay system for Executive Schedule officials, even though that system is authorized under chapter 53.
- DHS employees remain subject to the aggregate limitation on pay established under 5 U.S.C. 5307, and the annual rate of pay for employees covered by the pay system proposed here may not exceed the rate for level I of the Executive Schedule.
- DHS must ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law.
- Any modification of chapter 77 appeals procedures must be consistent with the requirements of due process, must provide for expeditious handling of DHS cases to the maximum extent practicable, and must make modifications only insofar as those modifications are designed to further the fair, efficient, and expeditious resolution of DHS cases.
- DHS and OPM may not issue new regulations under the section 9701 authority after the 5-year period following the 12-month transition period beginning on the effective date of the Homeland Security Act. Since the Act became effective on January 24, 2003, the section 9701 regulatory authority sunsets on January 23, 2009. Any section 9701 regulations issued before that date will remain in effect.

Collaboration With Employee Representatives

Section 9701 also prescribes certain procedural requirements in connection with the exercise of the joint DHS/OPM regulatory authority. Section 9701(e) sets forth provisions to ensure collaboration with employee representatives in the planning, development, and implementation of any new or modified HR system. These provisions are described in detail in the "Next Steps" section of this **SUPPLEMENTARY INFORMATION**.

In addition to the procedural requirements related to consultation with employee representatives, the Homeland Security Act also requires the Secretary and the Director to consult with the Merit Systems Protection Board (MSPB) before issuing regulations modifying the appeals procedures under chapter 77.

Designing Options for a New HR System

Design Team Membership and Purpose

With the enactment of the Homeland Security Act of 2002, DHS Secretary Tom Ridge and OPM Director Kay Coles James made a commitment that the Department's new HR system would be the result of a collaborative and inclusive process involving managers, employees, the Department's largest unions, and a broad array of stakeholders and experts from the Federal sector and private industry. This commitment went far beyond the strict requirements of the Homeland Security Act, as described above, because the Secretary and the Director felt it was critical to involve employees, the unions that represent them, and DHS managers in a direct and meaningful way throughout the entire design process—not just at the end of the process, as required by law.

In April 2003, the Secretary and the Director established a DHS/OPM HR Systems Design Team composed of DHS managers and employees, HR experts from DHS and OPM, and professional staff from the agency's three largest Federal employee unions (the American Federation of Government Employees, the National Treasury Employees Union, and the National Association of Agriculture Employees). The 48 team members were assigned to one of two sub-teams: (1) pay, performance, and classification or (2) labor and employee relations. Each sub-team had two co-leaders, one from DHS and one from OPM.

The team was not asked to reach agreement on a single solution or the best approach in any of the six areas where DHS was given flexibility. Instead, the team's mission was to develop a wide-ranging set of options for a new HR system at DHS. To help in this effort, the team conducted extensive research into human capital practices in the public and private sectors, talked with many leading human resources experts, heard directly from DHS employees and managers through a series of town hall meetings and focus groups, and gathered insights from a Field Team composed of DHS managers and local union officials who were asked to provide feedback and a front-line perspective to the Design Team. The lessons learned through these outreach and research efforts helped the Design Team develop a total of 52 options that addressed one or more of the six HR areas under consideration. The options were presented to the DHS Human Resource Management Senior Review Advisory

Committee on October 20–22, 2003. (The Senior Review Committee and its review of the options are described in detail below.)

Guiding Principles

During the Design Team's inaugural meeting in April 2003, Secretary Ridge, Director James, and the presidents of the three largest Federal employee unions at DHS discussed the fundamental elements of a model HR system for the Department. They stated, for example, that any new system must be responsive to the mission of the agency, that it must be performance-based, that it must be a 21st century system agile enough to respond to 21st century threats, and that it must be credible and fair.

Building on these requirements, the Design Team developed a set of "guiding principles" that were reviewed by the Field Team and approved by the Senior Review Committee. The Senior Review Committee agreed that options for a new HR system must, first and foremost, be mission-centered. The new system must be performance-focused, contemporary, and excellent. It must generate respect and trust; it must be based on the principles of merit and fairness embodied in the statutory merit system principles; and it must comply with all other applicable provisions of law. In addition, the Design Team and the Senior Review Committee agreed that the process for developing HR options must be collaborative, reflecting the input of managerial and non-managerial employees at all levels in DHS and of employee unions. These guiding principles served as the basis for conducting research and outreach activities and, later, for evaluating options for a new HR system.

Research and Outreach Activities

The research phase of the design process took place from April until July 2003. The pay, performance, and classification (PPC) sub-team focused its work on those chapters of title 5 which cover pay systems, performance management, and classification. The labor relations/employee relations (LR/ER) sub-team focused its research on those chapters of title 5 dealing with labor relations, adverse actions, and appeals. Both sub-teams researched promising and successful practices and systems in their respective areas. Both also sought to understand the reasons for less-than-successful practices and systems. The two sub-teams followed the same methodology in conducting research by identifying sources of information and devising and implementing methods of collecting, categorizing, and storing the information so that it was available to the entire team. In addition, the Design Team collected and analyzed statistical information about the DHS workforce. To understand what employees thought about the current systems, team members also attended DHS town hall meetings and employee focus groups at various locations around the country, as described in greater detail below.

The PPC sub-team identified 25 areas of interest and assigned groups to research each area. The areas of interest included the structure of pay ranges, methods for categorizing types of work, and different appraisal and rating methods. The PPC sub-team identified research sources from State and local governments, international organizations, non-profit organizations, other Federal agencies with different pay systems, and private sector organizations. These sources were asked to give presentations to the sub-team or full team, as appropriate. Some sources, who could not meet with the Design Team, were interviewed by team members.

The LR/ER sub-team followed similar practices and identified similar groups. However, since Federal sector labor relations are conducted differently than in the private sector and in State and local governments, few outside sources were identified by the LR/ER sub-team as suitable models in the labor relations area. Instead, the LR/ER sub-team identified experts in the field of Federal sector labor relations to be interviewed or to give presentations to the sub-team. There were, however, a number of sources in the private sector and in State and local governments that had innovative or promising processes for handling adverse actions and appeals.

Both sub-teams made an effort to ensure that their fact-finding and data-gathering activities were balanced. For instance, in the labor relations area, the LR/ER sub-team identified organizations with strong labor relations programs, as well as those with restricted programs or no labor relations programs at all. The Design Team also conducted a literature review to identify articles, reports, and other publications, which added to the body of information on current HR practices. Altogether, the Design Team contacted and received information from almost 200 individuals. A summary of the research conducted by the Design Team can be found at *http://www.epa.gov/edocket.*

Town Hall Meetings and Focus Groups

As noted above, Design Team members, along with senior DHS and OPM officials, attended a series of town hall meetings and focus groups sponsored by DHS. Consistent with the team's collaborative approach, these meetings were planned jointly with employee representatives and were conducted to inform employees about the design process and to solicit employees' perceptions of current HR policies.

To ensure that each town hall meeting and focus group meeting was attended by a diverse group of DHS employees, careful consideration was given to participant selection methodology. Diverse representation was sought and achieved by DHS component; geographic location; job/series; bargaining unit and non-bargaining unit status; and age, gender, and ethnicity demographics.

Town hall meetings with DHS employees were held between May and July 2003 in El Paso, Texas; Los Angeles, California; Seattle, Washington; Detroit, Michigan; New York, New York; Norfolk, Virginia; Miami, Florida; and Atlanta, Georgia. Senior DHS and OPM officials, including Janet Hale, DHS' Under Secretary for Management, Asa Hutchinson, Under Secretary for Border and Transportation Security, and Mike Brown, Under Secretary for Emergency Preparedness and Response, presided over each town hall meeting, with senior union officials joining them in some locations. Concurrent with the town hall meetings, 54 focus groups—44 with non-supervisory employees and 10 with supervisors—were held in the same 8 locations, as well as in Baltimore and Washington, DC. One of the Baltimore focus groups was composed entirely of blue-collar ("wage grade") employees. In addition, two focus groups were conducted with DHS HR professionals. In total, more than 2,000 DHS employees participated in these town hall meetings and focus groups.

Each focus group was professionally facilitated and included several Design Team members as observers, note takers, and/or technical experts. For each of the six HR areas under review, focus group participants were asked, among other things, what they thought worked well in the current HR systems and what they thought should be changed. The information received from focus group participants was summarized and made a part of the Design Team's research. A comprehensive and detailed report on the focus group process and findings can be found at *http://www.epa.gov/edocket.*

Communications Strategy

A comprehensive communications strategy is essential for designing and implementing a new HR system. DHS

therefore developed a communications strategy in order to build and sustain high levels of respect and trust among DHS employees—one of the guiding principles for the design process—and to gain insight and support and address the concerns of stakeholders inside and outside of DHS. The objectives of DHS' communications strategy were to (1) raise awareness, disseminate information, and promote a clear understanding of the purpose for designing a new HR system; (2) manage stakeholder expectations and address their concerns; (3) provide opportunities for two-way dialogue between the Design Team and the stakeholders; and (4) generate a flow of timely, accurate, and consistent messages.

DHS identified channels for disseminating relevant, timely, and consistent information (including a wide variety of print and electronic media, e-mail, town hall meetings, focus groups, speeches, and briefings) and developed an action plan for communicating with each stakeholder. The Design Team also developed key messages to include in stakeholder communications to reinforce the guiding principles of the DHS HR systems design process. Finally, the Design Team developed mechanisms for providing feedback to ensure an on-going two-way dialogue between the design team and its stakeholders and to evaluate the effectiveness of communication activities in meeting the communication strategy objectives.

Outreach to Stakeholders

In addition to reaching out to DHS employees and to organizations and individuals of interest to the Design Team as part of its research activity, the Design Team reached out to stakeholders who were thought to be keenly interested in the design of new HR systems for DHS. As part of the communications strategy developed by DHS, the Design Team invited selected stakeholders to participate in two stakeholder briefings held at OPM in late August 2003.

The first stakeholder briefing was for Federal employee unions not represented on the Design Team. Seven individuals representing six employee unions attended this briefing. The second stakeholder briefing was for other stakeholders identified by DHS through its communications strategy. About 20 individuals representing 13 organizations or other Federal agencies participated in the second briefing. Attendees at both briefings received background information about the Homeland Security Act, an update on the Design Team's work plan, a presentation on the guiding principles developed by the Design Team, and updates on the research activities of the team, including town hall meetings and focus groups. Attendees were afforded an opportunity to participate in a question-and-answer session following these presentations.

Both before and after the stakeholder briefings, the Design Team also responded to requests from other stakeholders, including the General Accounting Office and the Coalition for Effective Change (an umbrella organization consisting of more than 30 Federal management associations), to bring them up to date on the team's activities. Design Team leaders also briefed the staff of key congressional committees regarding the progress of the design process, and officials from DHS and OPM testified before the House Committee on Government Reform's Subcommittee on Civil Service and Agency Organization and the Senate Committee on Governmental Affairs.

Options Development Process

The options development process was grounded in the extensive research described above. The resulting product was a set of 52 options that cover a broad range of variations on the six areas of focus.

The options development process was collaborative and inclusive, with ample opportunity for input from employees and their representatives. To ensure that the options reflected the wide range of views and concerns expressed by various entities, the Design Team did not attempt to reach consensus regarding the merits of the options. Consequently, none of the 52 options presented represents a consensus view of the Design Team.

Some of the options integrate approaches to developing new HR systems across two or more of the six subject matter areas under consideration. This is especially true of many of the pay, performance, and classification options, which were intended to illustrate how various pay, performance, and classification system elements might work in combination. The pay, performance, and classification options also tended to cluster around several distinct themes, such as "time-focused" options, "performance-focused" options, and "competency-focused" options.

The initial draft options were reviewed by the Field Team to capture feedback prior to finalizing them for submission to the Senior Review Committee. The options presented to the Senior Review Committee do not exhaust all of the possible combinations of subsystems, nor were the options intended to imply that there might not be other possible ways of combining the approaches incorporated in the different options. In addition, the Secretary and the Director remain free to suggest and adopt other ways of combining various design elements to establish a new HR system for DHS.

Summary and Review of Options

Overview of Pay, Performance Management, and Classification Options

The pay, performance, and classification sub-team developed a total of 27 options. The majority of these options attempted to present an integrated set of proposals across the pay, performance management, and classification areas. Among these options, four were traditional, time-focused graded systems under which pay progression would be based primarily on time in grade. Under these options, any general adjustments to the pay structure would be passed on automatically to all employees whose performance is at least acceptable. (The status quo General Schedule option provides across-the-board and locality pay increases to all employees, regardless of performance.)

The eight performance-focused options would link individual base pay and bonuses to individual, team, and/or organizational performance. Several of these options do not provide for any automatic pay increases. They usually (but not always) make use of a streamlined classification and paybanding system that groups similar occupations together in "clusters" that contain up to four pay bands each.

The four competency-focused options would make use of a set of competencies (*i.e.*, knowledge, skills, and abilities) developed for specific positions or occupations as a key component in classifying jobs, setting basic pay, and managing performance. Each of these options would use competencies to some degree, but most also would have a strong performance component, with pay progression based on the acquisition and application of competencies or the evaluation of performance.

Among the remaining pay, performance management, and classification options, there was one "rank-in-person" option that would make use of a person-based, rather than position-based, pay and classification system (similar to military or Foreign Service systems) and one collective bargaining option, under which all aspects of pay, performance

management, and classification systems would be subject to collective bargaining for all DHS bargaining unit employees. Finally, the pay, performance, and classification sub-team developed five "stand-alone" performance management or classification options and four "plug-and-play" options. A "stand-alone" option is one that provides a self-contained alternative to one of the three major components of an integrated pay/performance management/classification option. For example, a "stand-alone" performance management option could be substituted in its entirety for the performance management portion of an integrated option. A "plug-and-play" option, in contrast, generally addresses only one feature or aspect of a pay/performance management/classification system and cannot be substituted in its entirety for any of the major components of an integrated option. For example, a gainsharing/goalsharing program could be added to an integrated pay/performance management/classification option without altering the basic character of that option

Overview of Labor Relations, Adverse Action, and Appeals Options

Labor Relations

The labor and employee relations sub-team developed seven labor relations options that describe, among other things, the parties' bargaining obligations and how the labor relations program would be administered. One of the options would retain the status quo as codified in chapter 71 of title 5, United States Code, which sets out the rights and obligations of labor and management and authorizes the three-member Federal Labor Relations Authority (FLRA) to administer the labor relations program.

Some of the labor relations options proposed to narrow the scope of bargaining and/or place additional limitations on when the duty to bargain would arise. Some also would place time limits on bargaining over term and mid-term agreements. All of the options (except for the status quo) would replace FLRA and the Federal Service Impasses Panel with an internal DHS labor relations panel or administrator that would assume all or some of the functions performed by those two bodies. All of the options also would, for homeland security reasons or to meet operational needs, permit DHS management to act quickly with no bargaining at all or bargaining only after the action is taken.

Adverse Actions and Appeals

The sub-team developed 16 adverse action and/or appeals options, including a status quo option. The current adverse action process is found in chapter 75 of title 5, U.S. Code, which identifies the procedures for proposing and taking adverse actions against certain categories of employees. The current appeals process is found in chapter 77 of title 5, which identifies the procedure that covered employees must follow to appeal certain adverse actions to MSPB.

Some of the adverse action options would provide protections to more employees than are covered today under chapter 75, while others would narrow employee coverage. Similarly, some options would expand the range of matters that would be considered adverse actions (*e.g.*, any suspension) while others would narrow that range (*e.g.*, adverse actions limited to removals and suspensions of more than 30 days). All options (except the status quo) would replace the two current statutory processes for handling misconduct and poor performance with a single process.

Some of the appeals options would provide appeal rights to more employees than have such protections today (*e.g.*, appeal rights for probationary employees), while other options provide appeals rights to fewer employees (*e.g.*, appeal rights only for employees who complete 2 years or more of Federal service). Some of the options would replace MSPB with an internal DHS panel that would adjudicate adverse action appeals. Some options would raise management's burden or standard of proof required to win an appeal, while other options would lower that burden.

There were also two "plug-and-play" LR/ER options. One provides for a bargaining impasse standard that third parties would use to resolve impasse disputes between management and labor, and the other would establish alternative dispute resolution programs to address employee claims arising from adverse actions.

Review of Options by Senior Review Committee

In June 2003, DHS appointed 13 individuals to the DHS Human Resource Management System Senior Review Advisory Committee, which was chartered as a Federal advisory committee under the Federal Advisory Committee Act (FACA). Members included six top officials from DHS, four top officials from OPM, and the presidents of the three largest employee unions representing DHS employees. In addition, five non-Federal experts in public administration were designated as technical advisors to the Senior Review Committee. A complete listing of Senior Review Committee members and technical advisors follows:

Members From the Department of Homeland Security:
- Janet Hale, Under Secretary for Management (Co-Chair);
- Robert Bonner, Commissioner of Customs and Border Protection;
- James Loy, Administrator, Transportation Security Administration;
- Eduardo Aguirre, Director, Bureau of Citizenship and Immigration Services;
- J. Michael Dorsey, Chief of Administrative Services;
- Ralph Basham, Director, United States Secret Service.

Members From the Office of Personnel Management:
- Steven R. Cohen, Senior Advisor for Homeland Security (Co-Chair);
- Doris L. Hausser, Senior Policy Advisor to the Director and Chief Human Capital Officer;
- Ronald P. Sanders, Associate Director for Strategic Human Resources Policy;
- Marta B. Perez, Associate Director for Human Capital Leadership and Merit System Accountability.

Members From Unions:
- John Gage, President, American Federation of Government Employees;
- Colleen Kelley, President, National Treasury Employees Union;
- Michael Randall, President, National Association of Agricultural Employees.

Technical Advisors:
- Robert Tobias, Distinguished Adjunct Professor, American University;
- Patricia Ingraham, Professor of Public Administration, Maxwell School, Syracuse University;
- Maurice McTigue, Visiting Scholar, Mercatus Center, George Mason University;
- Bernard Rosen, Distinguished Adjunct Professor in Residence Emeritus, American University;
- Pete Smith, President and Chief Executive, Private Sector Council.

The Senior Review Committee held its first meeting on July 25, 2003, in Washington, DC. The meeting was open to the public and was conducted in accordance with FACA rules and regulations. At this meeting, the Committee heard presentations from Design Team leaders about the team's research strategy and methods, the guiding principles developed by the

Design Team, and the options development process. The Committee agreed to a slightly modified version of the guiding principles and an options template developed by the Design Team for the purpose of presenting options in a consistent fashion.

The Senior Review Committee held its second and last meeting on October 20–22, 2003, in Washington, DC. Once again, this meeting was open to the public and conducted in accordance with FACA rules and regulations. The purpose of the meeting was to discuss possible options for new HR systems in the areas of pay, performance management, classification, labor relations, adverse actions, and appeals and to express views that would inform decisions to be made subsequently by DHS Secretary Ridge and OPM Director James regarding which systems should be implemented within DHS.

The October 2003 meeting, in downtown Washington, DC, was professionally facilitated and well-attended. Following opening statements on the first day, the Committee members and technical advisors received a presentation from Design Team leaders about the pay, performance management, and classification options developed by the Design Team. The facilitator then asked Committee members for their views on the various categories of options presented. The second day followed a similar pattern, with presentations by Design Team leaders on the labor relations, adverse actions, and appeals options developed by the Design Team, followed by a facilitated discussion of those options. On the final day of the meeting, Committee members and technical advisors were afforded an opportunity to summarize their views for the benefit of the Secretary and the Director.

Over the course of this 3-day meeting, discussion and debate centered on the best design for DHS' HR system. Several topics evoked wide-ranging perspectives, but core areas and principles related to system design and the design process drew a great deal of consensus among the members. For example, the members agreed that—

- Above all else, any new HR system for DHS must be mission-focused, and its design must facilitate mission performance;
- the future system should be fair, transparent, and credible;
- establishing broad general principles as a foundation for the future system will be important to ensure integration, but HR options might have to be tailored to specific parts of DHS;
- employee and union participation, as well as effective communication, will be critical to creating, implementing, and operating a successful HR management system;
- creating a new system will take time and require a substantial investment of resources, including training and development, particularly for managers who must implement the changes in a manner that is seen by employees and the public as fair and credible.

Discussion of the various Design Team options revealed a wide range of opinions, with some options evoking greater discussion than others. A comprehensive summary of the October Senior Review Committee meeting can be found at *http://www.epa.gov/edocket.*

Summary of Public Comments on Options

Comments regarding the options discussed at the October Senior Review Committee meeting were received from a total of 16 organizations and individuals, including 5 employee organizations and 1 organization representing senior executives. Some of these comments were presented orally during the public comment period on October 21. Other comments were submitted to the Senior Review Committee in writing.

The comments reflected a range of views that included strong support for flexibility, as well as some concern for preserving due process for employees. It was suggested that inequities should not be permitted under the guise of national security and that it is not necessary to "fix" systems that are working well. At the same time, some comments stressed that DHS would need considerable HR flexibility to carry out its mission efficiently.

Comments also addressed the importance of recognizing and rewarding excellence. Some commenters expressed trepidation about implementing a pay-for-performance system, noting a potential for favoritism which can discourage teamwork. Others expressed support for the concept, while urging that such a system be adequately funded and ample training be provided. The importance of good communication with employees throughout the design and implementation of the new system was also noted.

Evaluation of Design Process

The creation of DHS is the largest undertaking of its kind since the creation of the Department of Defense in the late 1940s. The success of merging more than 20 agency components and more than 180,000 employees into a single organization with a clear mission and focus will depend to a considerable degree on how effectively and efficiently the Department addresses its human capital issues.

Accordingly, the General Accounting Office (GAO) evaluated the DHS/OPM HR systems design process. GAO's findings and recommendations are found in GAO report #GAO–03–1099 (September 2003).

The report praises the collaborative and inclusive process developed for designing new DHS HR systems and for "reflecting important elements of effective transformation." Specifically, the report indicates that the design process incorporated the following essential ingredients to successful transformation:

- Leadership—on-going commitment of both DHS and OPM leadership to stimulate and support the design effort.
- Key Principles—the guiding principles of the design process reflected support for the mission and the employees of the new department, protection of basic merit system principles, and the commitment to incorporate employee accountability for performance.
- Employee Involvement—collaboration with employee representatives and employee involvement through the focus group interviews, town hall meetings, and Field Team participation.

The report further states that the analysis of DHS' effort to design a human capital system "can be particularly instructive in light of legislative requests for agency-specific human capital flexibilities at the Department of Defense and the National Aeronautics and Space Administration."

The report also includes some valuable recommendations for ensuring effective implementation of the new system. These recommendations include effective communication characterized by two-way dialogue, integration of the human capital policy into the strategic plan and programmatic goals, and continued employee feedback.

Summary of Proposed HR System for DHS

The Department of Homeland Security was created in recognition of the paramount responsibility to safeguard the American people from terrorist attack and other threats to homeland security. Congress stressed that any HR system established by DHS and OPM must be "flexible" and "contemporary" (5 U.S.C. 9701(b)(1) and (2)). The Secretary of Homeland Security and the Director of OPM are

determined to create a new HR system for DHS that is, first and foremost, mission-centered. In other words, the most important objective of the new system must be to serve and advance the Department's critical homeland security mission. At the same time, DHS and OPM remain committed to ensuring that the new DHS HR system generates respect and trust and that it is based on the principles of merit and fairness embodied in the statutory merit system principles.

Secretary Ridge and Director James have determined that the best way to achieve these goals is to create a system that is performance-focused, flexible, and contemporary, since these qualities are critical to freeing the DHS workforce to focus on the Department's mission. For example—

- The proposal to establish a pay-for-performance system for DHS is designed to ensure that employees have a clear understanding of their expected performance and to reinforce and reward high-performing employees who advance and support the Department's mission by, for example, guarding our Nation's borders, protecting our Nation's critical infrastructure, and enhancing the security of air travel.
- Providing for greater flexibility in collective bargaining within DHS allows the Department to take action against terrorist threats, secure the Nation's borders and ports of entry, and meet other critical mission needs without unnecessary delay. We have narrowed the duty to bargain over core management rights where flexibility and swift implementation are most critical to achieving the mission, while preserving the right to bargain over important HR polices.
- Authorizing the Secretary to designate offenses that merit mandatory removal and establishing a special independent DHS panel to review such actions is designed to recognize both the harm certain acts of misconduct can inflict on the Department's critical mission and to permit DHS to move quickly to address and resolve very serious misconduct.
- The adoption of a single, lower standard of proof ("substantial evidence" rather than "preponderance of the evidence") for all adverse actions, whether based on performance or conduct, is designed to recognize the appropriate deference that should be granted to DHS officials responsible for overseeing the Department's critical operations and to ensure consistency in the review of all adverse actions involving DHS employees, thus reinforcing the single overarching mission of the new Department.
- The streamlined process for adverse action appeals and the creation of a DHS Labor Relations Board will balance employee rights with critical mission needs.

As explained previously, the Secretary of Homeland Security and the Director of OPM are authorized by the Homeland Security Act of 2002 to waive specified chapters of title 5, United States Code, to create a new HR system for DHS. The Secretary and the Director have reviewed and given full consideration to all of the options developed by the DHS/OPM HR Systems Design Team. In addition, they have given due weight to the views and opinions expressed by DHS employees in the town hall meetings and focus groups hosted by DHS from May to July 2003. They have given special consideration to the thoughtful review of the options conducted by the DHS HRMS Senior Review Advisory Committee in October 2003 and to all public comments received in connection with that meeting. Finally, as required by law, they have consulted with MSPB regarding possible changes in the appeals procedures established under chapter 77 of title 5, United States Code. They also consulted with many other Federal officials and external stakeholders.

The proposed regulations reflect authorities that are extended to the Secretary and the Director through January 23, 2009. During that period, DHS and OPM are committed to conducting an ongoing evaluation of the HR system described here—overall, as well as with regard to its separate elements—to ensure that it is achieving its intended purposes. Further, DHS and OPM are committed to making appropriate modifications to that system as circumstances warrant, particularly with respect to any unanticipated consequences that may emerge during its implementation. To that end, these regulations will be issued in interim final form, so as to provide the Secretary and the Director with sufficient flexibility (subject to appropriate consultation with stakeholders) to make additional changes to the HR system that may result from initial evaluations. Subsequent evaluations may result in further changes in the regulations.

The proposed regulations in part 9701 of title 5, Code of Federal Regulations, are organized into six subparts that correspond to the specific chapters in title 5, United States Code, which DHS and OPM are authorized to waive, plus an opening subpart (subpart A) that sets forth general provisions applicable throughout part 9701. Subpart B sets forth a new job evaluation (classification) system for DHS that waives chapter 51 of title 5 for most purposes. Subpart C sets forth a new pay and pay administration system that waives substantial portions of chapter 53. Subpart D sets forth new performance management provisions that replace chapter 43. Subpart E sets forth new labor-management relations provisions that replace chapter 71. Subpart F sets forth new rules for adverse actions that replace the rules set forth in chapter 75. And subpart G sets forth new rules governing appeals that replace the rules set forth in chapter 77.

General Provisions—Subpart A

Subpart A of the proposed regulations sets forth their purpose, establishes general provisions governing coverage under the new DHS HR system, and defines terms that are used throughout the new part 9701. Part 9701 will apply to DHS employees who are identified under the regulations as eligible for coverage and who are approved for coverage, as of a specified date, by the Secretary of Homeland Security. This will enable DHS to phase in coverage of particular groups of employees or components of the Department. Subpart A also allows DHS to issue internal Departmental regulations that further define the design characteristics of the new HR system. (See the "Next Steps" section at the end of this **SUPPLEMENTARY INFORMATION.**) Finally, subpart A clarifies the relationship of these regulations to other provisions of law and regulation outside those that are being waived with respect to DHS.

A New Job Evaluation, Pay, and Performance Management System for DHS

DHS and OPM have determined that a performance-focused job evaluation and pay system best meets the critical operations and mission-focused needs of DHS and that changes are needed in the current performance management provisions to support a new, performance-focused job evaluation and pay system.

DHS and OPM have concluded that the current GS classification and pay system, as a whole, does not focus sufficiently on creating and sustaining a high performance culture within DHS and that other "time-focused" options considered during the design process rely too much on longevity and not enough on recognizing and rewarding high performance at all levels of the workforce. DHS and OPM found some aspects of "competency-focused" options to be attractive, particularly for employees early in their careers, who are still acquiring the competencies,

skills, and knowledge needed to make significant contributions to the mission of DHS. DHS and OPM agree that a new job evaluation and pay system should focus primarily on encouraging the development of a high performance culture.

All DHS employees currently covered by the job evaluation and pay systems established under chapter 51 or 53 of title 5, United States Code, are eligible for coverage under this job evaluation and pay system at the discretion of DHS, in coordination with OPM, except for (1) Executive Schedule officials (who, by law, remain covered by subchapter II of chapter 53) and (2) administrative law judges paid under 5 U.S.C. 5372. At present, DHS plans to cover only GS employees and employees in senior-level (SL) and scientific or professional (ST) positions.

SES members employed by DHS will be eligible for coverage under the new DHS pay system. However, the proposed regulations provide that any new pay system covering SES members must be consistent with the performance-based features of the new Governmentwide SES pay-for-performance system authorized by section 1125 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, November 24, 2003). If DHS wishes to establish an SES pay system that varies substantially from the new Governmentwide SES pay-for-performance system, DHS and OPM will issue joint authorizing regulations consistent with all of the requirements of the Homeland Security Act, as set forth in 5 U.S.C. 9701. In addition, DHS and OPM will involve SES members and other interested parties in the design and implementation of any new pay system for SES members employed by DHS.

As explained in the "Background" section, above, the new job evaluation and pay system proposed in these regulations cannot apply directly to DHS employees covered by a basic pay system authorized by an authority outside title 5. However, it is possible for DHS to extend this job evaluation and pay system by administrative action to Transportation Security Administration (TSA), Stafford Act, Coast Guard Academy, and other similarly situated employees under authorities provided to the Secretary or other DHS officials.

The transitional provisions in subparts B and C include a special authority to deal with the possibility that DHS may transfer Federal Air Marshal Service positions from TSA to another DHS component before a new DHS job evaluation and pay system is in place. This special authority allows DHS to establish a temporary job evaluation and pay system for any such transferred Federal Air Marshal Service positions that parallels the system established for TSA employees. Absent this authority, these transferred positions generally would be covered by the GS classification and pay system. Thus, without the transitional authority in subparts B and C, this would mean that Air Marshals could be moved from the TSA job evaluation and pay system to the GS system, and then to the new DHS system, all in a relatively short period of time. This would be far too disruptive to these critical employees, and the proposed regulations minimize this disruption. The regulations authorize DHS to modify the TSA-parallel system after coordination with OPM. For example, DHS may adjust the rate ranges to be more consistent with the ranges that apply to other employees in the same DHS component.

By necessity and design, the proposed regulations on job evaluation, pay, and performance management provide considerable discretion to design many of the detailed features of the new system, by DHS at its sole and exclusive discretion and/or in coordination with OPM. What follows, therefore, is intended to provide a general description of the system DHS and OPM will establish under the authority provided by 5 U.S.C. 9701 and the regulations set forth in the proposed 5 CFR part 9701. DHS is committed to a high degree of employee involvement in developing the details of the new job evaluation, pay, and performance management system.

Throughout the development and implementation of the new DHS job evaluation, pay, and performance management system, DHS will coordinate with OPM to ensure the flexibilities afforded by the Homeland Security Act are exercised in a manner that takes Governmentwide impact into account. This coordination role is consistent with OPM's institutional responsibility, as codified in 5 U.S.C. chapter 11 and Executive Order 13197 of January 18, 2001, to provide Governmentwide oversight in human resources management programs and practices.

Job Evaluation (Classification)—Subpart B

Subpart B will provide DHS with the authority to replace the current 15-grade structure of the GS classification and qualifications system with a new method of evaluating or classifying jobs to determine their relative value to the organization by grouping them into occupational categories and levels of work for pay and other related purposes. Under this new "job evaluation" system, DHS will have the authority to establish qualifications for positions and to assign occupations and positions to broad occupational "clusters" and pay levels (or "bands"). (Note: "Job evaluation" is a common term of art used among HR professionals. It is separate and distinct from the evaluation or appraisal of an employee's performance, which is addressed as part of the performance management system established under subpart D of the proposed regulations.)

In coordination with OPM, DHS will establish broad occupational clusters by grouping occupations and positions that are similar in terms of type of work, mission, developmental/career paths, competencies, and/or skill sets. These occupational clusters will serve as the basic framework for the DHS job evaluation system. DHS may elect to phase in the coverage of specific categories of employees or occupations under the new job evaluation and pay system established under these proposed regulations. Within each occupational cluster, DHS (in coordination with OPM) will establish broad salary ranges, commonly referred to as "bands." DHS may use OPM-approved occupational series and titles to identify and assign positions to a particular cluster and band. Occupational clusters typically will include the following bands, each with progressively higher pay ranges:

- Entry/Developmental—Employees in positions assigned to this band focus on gaining the competencies and skills needed to perform successfully at the full performance level.
- Full Performance—Employees in positions assigned to this band have completed all necessary entry-level training and/or developmental activities and have demonstrated they are capable of performing the full range of non-supervisory work required for positions in that occupation. Employees assigned to positions in this band will be evaluated primarily on their contributions to the mission of DHS.
- Senior Expert—Positions assigned to this band will be reserved for a relatively small number of non-supervisory employees who possess an extraordinary level of technical knowledge or expertise upon which DHS relies for the accomplishment of critical mission goals and objectives. Typically, entry will be controlled and/or competitive.
- Supervisory—Positions assigned to this band will be reserved primarily for first-level supervisors of employees in

the same occupational cluster. Typically, entry will be competitive.

This typical structure will provide a clearly-defined career path for each occupation within a cluster. DHS also will establish a separate cluster for higher-level managers. The accompanying table (table 1) illustrates the occupational cluster structure concept.

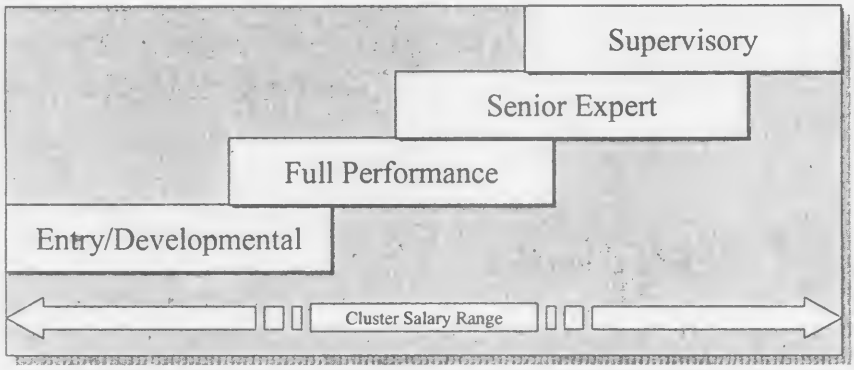

Table 1 **Illustrative Occupational Cluster**

Employees will be permitted to request reconsideration as to whether their job has been placed in the appropriate series or whether their job is covered by the system itself. An employee's assignment to a particular cluster or band within a cluster will not be subject to this reconsideration process.

The new job evaluation system for DHS will result in a streamlined method of evaluating jobs that no longer relies on lengthy classification standards and position descriptions or requires fine distinctions among closely related levels of work, as is now required under the GS classification system, without compromising internal equity and the merit system principle of equal pay for work of equal value. In addition, the system described here, together with the new DHS pay system described below, will provide DHS with greater flexibility to adapt the Department's job and pay structure to meet present and future DHS mission requirements.

Pay and Pay Administration—Subpart C

DHS, in coordination with OPM, will set the minimum and maximum rates for each band in each occupational cluster based on factors such as labor market rates, recruitment and retention information, mission requirements, operational needs, and overall budgetary constraints. The bands will have open pay ranges, with no fixed step rates. OPM will manage cross-agency consistency, competition, and movement within the Federal Government.

Pay adjustments under the new system will fall into three general categories: market-related adjustments comprising annual rate range adjustments and locality pay supplements, annual performance-based pay increases, and other individual adjustments. In keeping with the desire of the Secretary and the Director to achieve and sustain a culture of high performance, the proposed regulations provide that these pay adjustments will be provided only to employees who meet or exceed performance expectations. Under criteria to be developed by DHS, an employee whose performance is unacceptable and who does not receive annual market adjustments may have those adjustments granted prospectively if performance improves to the fully successful level or better.

Annual rate range adjustments and locality pay supplements will be determined by DHS, considering mission requirements, labor market conditions, availability of funds, pay adjustments received by employees in other Federal agencies, and other relevant factors. Annual rate range adjustments and locality pay supplements may differ by occupational cluster or band. DHS will determine locality pay areas in coordination with OPM. DHS will determine the timing of these annual pay adjustments. If DHS finds that recruitment and/or retention efforts are, or are likely to become, significantly handicapped for particular subcategories of employees within a band or cluster because of insufficient pay, DHS may, in coordination with OPM, establish special basic pay supplements that provide higher pay levels for those subcategories of employees.

Employees also will receive annual performance-based pay increases. For employees in a Full Performance or higher band, this pay increase will be based on their rating of record. The performance-based pay increase for a given rating of record will be expressed as a dollar amount or percentage of basic pay, and that amount or percentage will be the same for all employees assigned to a given "performance pay pool." A performance pay pool consists of the money allocated for performance-based pay increases for a defined group of employees. Generally speaking, performance pay pools will be established by occupational cluster and by band within each cluster, but may also be further divided by organizational unit and/or location.

In response to concerns expressed by employees and employee representatives during the DHS HR system design process, managers will not have complete discretion regarding the amount of performance-based pay

increases. Instead, performance-based pay increases will be a function of the amount of money in the performance pay pool, the relative point value placed on performance ratings, and the distribution of performance ratings within that performance pay pool. The relative point value of a performance rating will be established in advance through DHS implementing regulations or instructions.

A performance-based pay increase may be calculated as a dollar amount or as a percentage of basic pay. For example, consider a group of 100 employees for whom the performance pay pool is determined to be $84,390. If 30 employees receive a "fully successful" rating valued at 1 point, 46 employees receive an "exceeds fully successful" rating valued at 2 points, and 24 employees receive an "outstanding" rating valued at 3 points, then the total number of points for this group would be 194: (30 × 1) + (46 × 2) + (24 × 3) = 194. Therefore, the value of 1 point is $435 ($84,390÷194 = $435). In this example, a "fully successful" rating would result in a $435 performance-based pay increase ($435 × 1), an "exceeds fully successful" rating would result in an $870 pay increase ($435 × 2), and an "outstanding" rating would result in a $1,305 pay increase ($435 × 3).

A similar calculation could be made to determine the amount of performance-based pay increases in terms of a percentage of salary. Under this method, employees who receive a specific rating of record would receive the same percentage increase in basic pay, though the actual dollar amount of that increase would vary in proportion to each employee's rate of basic pay. The proposed regulations allow DHS to adopt either of these methods. In addition, DHS could adopt different point values for ratings of record than those used in this example.

If a performance-based pay increase would cause an employee's salary to exceed the band maximum, the proposed regulations allow DHS to grant a lump-sum payment in lieu of that portion of the pay increase that otherwise would exceed the band maximum. In addition, the proposed regulations allow DHS to establish a "control point" within a band, beyond which basic pay increases may be granted only for meeting criteria established by DHS, such as an "outstanding" performance rating. If a performance-based pay increase would cause an employee's salary to exceed such a control point, DHS could grant a lump-sum payment in lieu of that portion of the pay increase that otherwise would exceed the control point. Lump-sum payments in lieu of a basic pay increase generally will be granted at the same time as performance-based pay increases.

Employees in a Senior Expert band generally will move through the band range by means of the performance-based pay increases described above. In addition to those pay increases, however, DHS reserves the discretion to grant additional pay increases to those employees having specified mission-critical skills or those who make exceptional contributions to the DHS mission. Such additional payments will be limited to employees in the Senior Expert band and will not affect the performance pay pool associated with that band.

Employees in an Entry/Developmental band will receive pay adjustments as they acquire the competencies, skills, and knowledge necessary to advance to the target Full Performance band. The training program and competencies required for a given occupation will not change as a result of the new DHS pay system. Under the new system, DHS will be able to advance an employee through the Entry/Developmental band to the target Full Performance band without regard to the limits and constraints of the GS system, such as time-in-grade restrictions and rigid salary setting rules.

Other individual pay adjustments may be granted by DHS. These payments will not be considered part of basic pay. They include special skills payments for specializations for which the incumbent is trained and ready to perform at all times, such as proficiency in foreign languages or dog-handling; special assignment payments for assignments of greater difficulty or complexity within the same cluster and band; and special staffing payments to address recruitment and retention difficulties in particular occupations and/or locations. Some of these payments may require that employees enter into a service agreement as a condition of receiving additional pay.

Promotion pay increases (from a lower band to a higher band in the same cluster or to a higher band in a different cluster) generally will be fixed at 8 percent of the employee's rate of basic pay or the amount necessary to reach the minimum rate of the higher band, whichever is greater. (This amount is roughly equivalent to the value of a promotion to a higher grade within the GS system.) As with the current system, in the case of a demotion to a lower band for performance or conduct reasons, pay may be set at any lower rate within the lower band at management's discretion. Where pay retention is applicable (*e.g.*, following a reduction in force), the employee's pay will be frozen until such time as the maximum rate of the applicable band catches up to the frozen rate.

Upon implementation of the new system, employees will be converted based on their official position of record. Employees on temporary promotions will be returned to their official position of record prior to conversion. GS employees will be converted at their current rate of basic pay, including any locality payment, adjusted on a one-time, pro-rata basis for the time spent towards their next within-grade increase. Employees in career-ladder positions below the full performance level generally will be placed in the Entry/Developmental band in the appropriate cluster.

The new DHS pay system will provide DHS with an enhanced ability to establish and adjust overall pay levels in keeping with changes in national and local labor markets. It is designed to adjust individual pay levels based on the acquisition and assessment of competencies, skills, and knowledge for employees below the Full Performance band and on the basis of performance or contribution to mission for employees in the Full Performance band or higher. Above all, the new DHS pay system will be capable of adapting to changing circumstances and mission requirements.

Performance Management—Subpart D

DHS and OPM have decided to waive the provisions of chapter 43 of title 5, United States Code, in order to design a performance management system that will complement and support the Department's proposed performance-based pay system described above. The proposed system will also ensure greater employee accountability with respect to individual performance expectations, as well as organizational results.

Over the past 25 years, legal interpretations of the current chapter 43 have produced a system that is procedurally complex, inflexible, and paper-intensive, requiring a manager to set an employee's specific written elements and standards at the beginning of an annual appraisal period. In so doing, the manager must anticipate the myriad work assignments (each potentially with its own unique performance expectations) the employee will receive during the course of that appraisal period. These static, often generic standards make it difficult for managers to adjust performance requirements and expectations in response to the Department's rapidly

changing work environment, hold individual employees accountable for those general and/or assignment-specific work requirements and expectations, and make meaningful distinctions in employee performance as they accomplish those assignments.

The proposed regulations are designed to address these deficiencies. They continue to require that managers establish and communicate performance expectations to employees; however, they no longer require that this be accomplished exclusively through written performance elements and standards set at the beginning of the appraisal period. Instead, they give managers the option of establishing and communicating performance expectations during the course of the appraisal period through specific work assignments or other means (including standard operating procedures, organizational directives, manuals, and other generally established job requirements that apply to employees in a particular occupation and/or unit). However, managers may also continue to use performance plans, elements, and standards.

By providing managers more realistic alternatives for setting employee expectations and assessing their performance against those expectations, the Department will be better able to hold its employees accountable and to recognize and reward those who exceed expectations. By the same token, managers will also be held accountable for clearly and effectively communicating those expectations, giving employees feedback regarding their performance in relation to those expectations, making meaningful performance distinctions in support of the Department's new performance-based pay system, and identifying and addressing unacceptable performance.

Finally, in order to enable managers to make meaningful distinctions in performance, the regulations provide for a single level of unacceptable performance, a fully successful level, and at least one level above fully successful. The regulations do not permit two-level ("pass/fail") ratings for employees above the entry/developmental level, nor do they allow any type of rating quotas or forced ratings distribution. The regulations also provide for DHS to appoint Performance Review Boards to provide oversight and ensure consistent application of the performance management system.

Further, the regulations provide managers with a broad range of options for dealing with poor performance, including remedial training, an improvement period, reassignment, verbal warnings, letters of counseling, written reprimands, and/or adverse actions as defined in subpart F of the regulations. Adverse actions will include the reduction of an employee's pay within a band, giving managers another means of dealing with poor performance, short of demotion or removal. The proposed regulations also streamline and simplify the procedures involved in taking an adverse action without compromising an employee's right to due process (described below and in subpart F). In this regard, the proposed regulations require a manager to take the nature and consequences of the poor performance into account in deciding among these options.

As provided in subpart C of the proposed regulations, performance ratings of record will be used to make individual pay adjustments under the new DHS pay system. In recognition of these pay consequences, the regulations permit employees to grieve their ratings of record. Non-bargaining unit employees may grieve such ratings through the Department's internal administrative grievance procedure; bargaining unit employees will have access to negotiated grievance procedures. In the latter case, an exclusive representative may seek arbitration of an appraisal grievance, but the rating of record will be sustained unless the union is able to prove that it was arbitrary or capricious. Either party may file exceptions to an arbitration award with the DHS Labor Relations Board established under subpart E of these proposed regulations.

Generally, DHS employees who are currently covered by chapter 43 of title 5, U.S. Code, are *eligible* for coverage under the new performance management provisions in subpart D of the proposed regulations. Therefore, administrative law judges and Presidential appointees will not be eligible for coverage, because they are currently excluded from chapter 43 of title 5. However, certain categories of employees are currently excluded from chapter 43 by OPM administrative action, as authorized by 5 CFR 430.202(d), such as those hired under the Stafford Act; these employees are eligible for coverage under the new DHS performance management provisions. DHS will decide which of those categories of otherwise eligible employees will be covered by the Department's new performance management system or systems. The proposed regulations also allow DHS to develop, implement, and administer performance management systems tailored to specific organizations and/or categories of employees (for example, in a particular occupational cluster).

These proposed regulations lay the foundation for a performance management system that is fair, credible, and transparent, and that holds employees and managers accountable for results. However, a performance management system is only as effective as its implementation and administration. To that end, DHS is committed to providing its employees and managers with extensive training on the new performance management system and its relationship to other HR policies and programs, as well as on effective performance management generally.

A New Labor Relations, Adverse Actions, and Appeals System for DHS

Labor-Management Relations—Subpart E

As noted previously, the Department of Homeland Security was created in recognition of the paramount responsibility to safeguard the American people from terrorist attack and other threats to homeland security. In enacting the Homeland Security Act, Congress stressed that any HR system established by DHS and OPM must be "flexible" and "contemporary," enabling a swift response to the ever-evolving threats to our homeland. The labor-management regulations in this part are designed to meet these compelling concerns.

1. Purpose

DHS has a unique mission not duplicated elsewhere in the Federal Government. When Congress passed the Homeland Security Act and created DHS, it could have relied upon the current labor-management relations statute at 5 U.S.C. chapter 71 with respect to the Department's labor relations obligations. However, Congress chose not to maintain the status quo and gave the Secretary and the Director of OPM clear authority to waive or modify the provisions of chapter 71. (*See* 5 U.S.C. 9701(c).) In so doing, Congress provided DHS the option of exploring and implementing new and innovative human resources management systems that would be more responsive to the unique and critical mission of DHS. (*See* 5 U.S.C. 9701(a) and (c).)

These regulations define the purpose of the labor relations system. They implement the requirements of 5 U.S.C. 9701(b) by ensuring the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect

them, subject to the limitations on negotiability established in law, including the authority that Congress delegated to OPM and DHS to promulgate these regulations.

Chapter 71 of title 5, United States Code, enacted in 1978, recognizes that the "special requirements and needs of the Government" demand special procedures and that its provisions must be interpreted in a manner consistent with the requirement of "an effective and efficient Government." These regulations state that every provision of this subpart must be interpreted in a way that recognizes the critical mission of the Department, and each must be interpreted to promote the swift, flexible, effective, and efficient day-to-day accomplishment of that mission as defined by the Secretary.

2. Definitions

Unless otherwise provided, these regulations leave intact many of the definitions contained in chapter 71 of title 5. The regulations adopt the following terms and their associated definitions from that chapter and apply them to DHS: "employee," "labor organization," "exclusive representative," "supervisor," "collective bargaining," and "management official." The term "agency," as referenced in chapter 71, will be replaced by the term "Department" and refers to the Department of Homeland Security. The term "components" applies to the major entities under the Department, *e.g.*, Customs and Border Protection.

The regulations revise other definitions from chapter 71 as they would apply to DHS. The term "conditions of employment" has been redefined to exclude matters specifically provided for by Department-wide personnel regulations and to exclude pay, pay adjustments, and job evaluation under subparts B and C. The term "grievance" has been modified somewhat to mean any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation only if the law, rule, or regulation was issued for the purpose of affecting the working conditions of employees—not one that does so indirectly or incidentally. To this extent, DHS and OPM adopt the D.C. Circuit's interpretation of what constitutes a "grievance."

Chapter 71 of title 5, U.S. Code, defines employees who are excluded from coverage in a bargaining unit. In addition to managers and supervisors, "confidential employees" are excluded from coverage under chapter 71 if the employee acts in a confidential capacity with respect to an individual who "formulates or effectuates management policies in the field of labor relations." We believe this definition is drawn too narrowly. There are many management officials who do not formulate labor relations policy but who have labor-management relations responsibilities. For example, officials who resolve grievances at the second or third step of a negotiated grievance procedure or who serve on negotiating teams or help decide the position management takes in negotiating labor agreements. We propose to exclude from coverage any employees who work for such managers in a confidential capacity because of the sensitive nature of the information they might be privy to and the potential for real or perceived conflicts of interest.

3. Administration

The Department will create a Homeland Security Labor Relations Board (Board) composed of three external members appointed to fixed terms. These three members will be appointed by the Secretary, and one member will be nominated by the Chair of the Federal Labor Relations Authority (FLRA) from among the current members of FLRA. Members will be chosen not only for their background in labor-management relations, but also for their knowledge of the DHS mission and their leadership experience in comparable organizations. The Board must interpret the regulations in subpart E and related decisions and policies in a way that recognizes the critical mission of the Department and the need for flexibility.

The Board will issue decisions in the following types of cases: bargaining unit determinations; unfair labor practice claims arising out of the duty to bargain; information request disputes; bargaining impasses and negotiability disputes; and exceptions to arbitration awards. In order to maintain the integrity of the Governmentwide labor relations program and preserve DHS resources, FLRA will continue to supervise and conduct representation elections and retain jurisdiction over the processing of unfair labor practice charges concerning the rights and obligations of individual employees and labor organizations (*i.e.*, 5 U.S.C. 7116 (a)(1)–(4) and (b)(1)–(4)).

In evaluating the merits of a separate Homeland Security Labor Relations Board that would largely replace FLRA, DHS and OPM put a high premium on the Board members' understanding of and appreciation for the unique challenges the Department faces in carrying out its homeland security mission. Given its responsibilities to administer a Governmentwide labor relations program for over 1 million Federal employees, FLRA is less likely than an independent DHS Labor Relations Board to develop the mission-focus and homeland security expertise that the Department and its unions will need, nor will it be as able to dedicate its resources to prioritize DHS cases. However, to ensure independence and impartiality, the DHS Labor Relations Board will not report to the Secretary; rather, its members will be appointed to fixed terms and subject to removal only for inefficiency, neglect of duty, or malfeasance.

DHS and OPM also gave great weight to the benefits of a unified, expeditious process to resolve bargaining issues and disputes. Under the current system, a bargaining dispute can be investigated and pursued by FLRA's Office of General Counsel to determine whether there was an obligation to bargain; by FLRA itself to determine whether the matter is within the scope of bargaining; and by the Federal Service Impasses Panel to resolve the bargaining issue on its merits. This division of critical adjudicatory functions causes excessive delays and repeated litigation and contributes significantly to the cost of collective bargaining. OPM and DHS concluded that there are significant advantages to be gained from "one-stop shopping" to resolve bargaining disputes.

In sum, we determined that the Department should establish a separate Labor Relations Board focused on the DHS mission but completely independent. In addition, we concluded that the Board should oversee a unified dispute resolution process that will decide bargaining disputes more efficiently and effectively than is possible today under FLRA and chapter 71. However, the fragmentation and overlapping jurisdiction that makes resolving bargaining disputes so complex and protracted is not a problem in the way employee appeals are adjudicated by MSPB. As a single forum with a unified statutory process, MSPB already employs the "one-stop shop" approach to adverse action appeals that OPM and DHS will apply to bargaining disputes. That is why OPM and DHS are creating the DHS Labor Relations Board to resolve bargaining matters while preserving MSPB for deciding most employee appeals, subject to streamlined rules and new substantive standards, discussed more fully in the "Appeals" section of this Supplementary Information.

OPM and DHS also concluded that an understanding of the Department's mission is essential to resolving bargaining disputes, which involve

general conditions of employment affecting most or all bargaining unit employees. Except for offenses designated as "mandatory removal offenses" under subpart G, which will be resolved by an independent DHS panel, an appreciation for the Department's unique mission, while important, is not as essential for resolving individual employee appeals to MSPB.

Both the DHS Labor Relations Board and FLRA must interpret the regulations in subpart E in a way that promotes the swift, flexible, effective, and efficient day-to-day accomplishment of the Department's mission as defined by the Secretary. In addition, the Board is authorized to promulgate its own operating procedures and issue advisory opinions on important issues of law. These opinions will help both labor and management understand how key provisions of the regulations will be interpreted without the time and expense of years of litigation.

Matters that come before the DHS Labor Relations Board may be reviewed de novo, which means that the Board will have the discretion to reevaluate the evidence presented by the record and reach its own independent conclusions with respect to the matters at issue. Under chapter 71, FLRA reviews issues of law de novo. The Board will have the same authority, but it may also employ a de novo review to factual findings and contract interpretation. Given the inherently executive branch nature of decisions relating to homeland security and the Department's unique responsibilities in this area, the Board is authorized to conduct a thorough review of all matters, including factual determinations by its adjudicators or arbitrators, to safeguard the Department's homeland security mission.

Under 5 U.S.C. 7123, the United States courts of appeals have jurisdiction over appeals filed from final orders of FLRA, with limited exceptions. Similar judicial review in the U.S. Court of Appeals for the Federal Circuit exists for MSPB pursuant to 5 U.S.C. 7703. Ideally, these regulations would have applied the same standards and procedures as set forth in 5 U.S.C. 7123 and 7703 to the decisions of the DHS Labor Relations Board and the DHS Panel that will decide "mandatory removal offenses." This would have been the most efficient way in which to accord the right of judicial review to individuals adversely affected or aggrieved by a decision of the Board or the Panel. However, DHS and OPM currently lack the statutory authority to confer jurisdiction to hear such appeals in the United States courts of appeals or the U.S. Court of Appeals for the Federal Circuit. In light of these issues, the proposed regulatory language is silent on judicial review of decisions of the Board or the Panel. DHS and OPM seek comments on available options, including (1) remaining silent on judicial review and (2) retaining the current statutory judicial review provisions by permitting FLRA and MSPB to review decisions of the Board and the Panel.

Option 1. Under this option, DHS and OPM would not include appeal language in the regulation addressing any form of judicial review, but would allow existing governing legal principles to determine the circumstances under which there would be judicial review.

Option 2. Under 5 U.S.C. 7123, the United States courts of appeals have jurisdiction over appeals filed from final orders of FLRA, with limited exceptions. Under this option the final regulations would provide that Board decisions are appealable to the three-member FLRA but with a deferential standard of review appropriate for an appellate procedure of this type. FLRA would be required to decide an appeal from a final decision of the Board within 20 days. All decisions of FLRA, including those decisions on appeals from the Board, would be subject to judicial review in accordance with 5 U.S.C. 7123. Under this option, judicial deference would be given to the decisions of the Board because the Board is charged by regulation with interpreting and implementing the Homeland Security Act and was created to apply its specialized expertise in homeland security matters.

4. Employee Rights

The regulations retain the statement of employee rights enumerated in chapter 71. Employees, as defined in the regulations, will have the right to form, join, or assist any labor organization, or to refrain from any such activity. Each employee will be protected in the exercise of any rights under the regulations through existing FLRA procedures.

5. Union Rights and Obligations

As in chapter 71, these regulations provide that recognized unions are the exclusive representatives of the employees in the unit and act for and negotiate on their behalf, consistent with law and regulation. This section also preserves what has come to be known as the "Weingarten" right, which permits union representation at the employee's request when management examines an employee during an investigation and the employee reasonably believes that discipline will follow. The proposed regulations provide that representatives of the Office of the Inspector General, Office of Security, and Office of Internal Affairs are not representatives of the Department for this purpose.

Under current law, a union has the right to send a representative to a "formal meeting" called by management to discuss general working conditions with employees. Determining what is and is not a "formal meeting" as the FLRA and courts have interpreted that term requires managers to balance numerous factors concerning the relative formality of the meeting and the precise subject matter discussed. Front-line managers and supervisors are expected to be familiar with and know how to apply these complicated, nuanced criteria, and they get it wrong at their legal peril. This can have a chilling effect on discussions between management and employees concerning everyday workplace issues and can inhibit creative thinking and problem solving. This is particularly disruptive to the mission at ports of entry, where there are often multiple unions.

The rights associated with "formal meetings" were intended to safeguard against management efforts to bypass the union and deal directly with employees in ways that undermine the union's status as exclusive representative. We agree that such protections are needed, but these regulations eliminate the concept of a formal meeting. Instead, the regulations treat management efforts to bypass the union as a breach of the duty to bargain in good faith and an unfair labor practice. This change does not affect or limit the union's right to attend meetings at which an employee's grievance is discussed.

In conjunction with the regulation concerning grievances, this regulation resolves any uncertainty resulting from litigation about whether unions are entitled to participate in EEO proceedings, including mediation, after a formal EEO complaint has been filed. Under these regulations, unions do not have such a right unless the complainant requests union representation. This change will preserve the informality and confidentiality of the entire EEO complaint process.

Under these regulations, the Department will hold employee representatives to the same conduct requirements as any other DHS employees. The intent is to not bind the Department to FLRA's "flagrant

misconduct" standard or any other test developed through case decisions which may immunize union representatives engaged in otherwise actionable misconduct. The regulations clarify that the Department may address the misconduct of any employee, including employees acting as union representatives, as long as the agency does not treat employees more severely because they are engaging in union activity. The regulation is not intended to target the content of ideas; rather, it applies to misconduct in any manner expressed.

6. Information Disclosure

Under chapter 71, a union has the right to information maintained by the agency if the information is necessary and relevant to the union's representational responsibilities. This right is maintained with some modifications under these regulations.

Under the regulations, disclosure of information is not required if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information. This change was made to relieve management of the administrative burden of producing information that can readily be obtained some other way or information that the union does not really need to fulfill its representational obligations. The regulations further provide that information may not be disclosed if the Secretary or his designee determines that disclosure would compromise the Department's mission, security, or employee safety.

The proposed regulations specify that sensitive information such as home addresses, home telephone numbers, e-mail addresses, and other personal identifiers, may not be disclosed to unions without employees' express written consent. While this is not a change in existing statutory interpretation, it is necessary to specify these limitations in the regulations, given the extremely sensitive nature of the Department's mission and the serious consequences if such information fell into the wrong hands.

7. Management Rights

The Department's ability to respond rapidly to a variety of critical challenges, ranging from terrorist threats to natural disasters, is vital. To carry out its wide ranging mission, the Department must have the authority to move employees quickly when circumstances demand; it must be able to develop and rapidly deploy new technology to confront threats to security; and it must be able to act without unnecessary delay to properly secure the Nation's borders and ports of entry.

Actions such as these involve the exercise of management's reserved rights and lie at the very core of how DHS carries out its mission. Under chapter 71 of title 5, the obligation to notify the union well ahead of any changes in the workplace and complete all negotiations *before* making any changes could seriously impede the Department's ability to meet mission demands. For example, before the Department could redeploy personnel from one border to another, it could be required to bargain over the procedures it would have to follow in deciding how assignments are made, who gets deployed, and for how long. Based on these negotiations, the Department may have to spend valuable time canvassing for volunteers or considering seniority before moving people from one location to another. In the face of a committed and unpredictable enemy, these excessive limitations on the Department's authority to act where and when needed would significantly impede the Department's ability to accomplish its mission.

To ensure that the Department has the flexibility it needs, we propose to revise the management rights provisions of chapter 71. We will expand the list of nonnegotiable subjects in section 7106 to include what are now permissive subjects of bargaining—the numbers, types, and grades of employees and the technology, methods, and means of performing work. The Department will not be required to bargain over the Department's exercise of these rights or over most of the other rights enumerated in chapter 71, including the right to determine mission, budget, organization, and internal security practices, and the right to hire, assign and direct employees, and contract out. The Department can take action in any of these areas without advance notice to the union and without bargaining. After the Department acts, it will have discretion to bargain over procedures and appropriate arrangements. The regulations also provide for consultation with employee representatives both before and after implementation when circumstances permit.

The Department will have the same bargaining obligation it has today concerning the exercise of the remaining management rights in chapter 71. These include the right to lay-off and retain employees, to take disciplinary action, and to promote. With respect to these rights, management will be obligated to bargain over procedures and arrangements prior to implementation, as provided under chapter 71.

These changes were carefully crafted to meet the operational needs of DHS. We focused on those areas where flexibility and swift implementation are most critical to preserving and safeguarding our Nation. We concluded that the Department's mission could not be met merely by setting time limits on how long the Department would have to bargain before taking action or by streamlining the system in other ways. DHS must have flexibility in these core management right areas to respond without delay to an evolving and ever changing threat. We believe these proposed rules accommodate the collective bargaining rights provided by the Homeland Security Act without compromising the Department's paramount responsibility to protect the lives and security of the American people.

8. Bargaining Unit Determinations

In determining bargaining units, the Board will continue to apply the same factors set forth under chapter 71 (*i.e.*, do the employees in a proposed unit have a clear and identifiable community of interest, and does the unit promote effective and efficient dealings with the Department?). However, in applying these criteria, the Board will give the most weight to effectiveness and efficiency and determine bargaining units based on what is "an appropriate unit consistent with the Department's organizational structure." Using this standard will help align the Department's bargaining units as closely as possible with the agency's mission and organizational structure, reduce the threat of fragmented bargaining units, provide for more uniform conditions of employment, and facilitate contract administration, all of which contribute to more efficient and effective agency operations.

9. Duty To Bargain

In order to ensure a consistent approach to managing the Department within a multi-union, multi-bargaining unit environment, the proposed regulations specify that there is no duty to bargain over DHS-wide personnel policies and regulations including the human resources management system established by OPM and DHS (management must bargain over personnel policies and regulations issued by the Department's components). In addition, proposals that do not significantly impact a substantial portion of the bargaining unit are

outside the duty to bargain. This will focus bargaining on those matters that are of significant concern and relieve the parties of potentially lengthy negotiations over matters that are limited in scope and effect.

If parties bargain over an initial term agreement or its successor and do not reach agreement within 60 days, the parties will be able to agree to continue bargaining or either party may refer the matter to the Board for resolution. Mid-term bargaining over proposed changes in conditions of employment must be completed within 30 days or management will be able to implement the change after notifying the union.

As is currently the case, collective bargaining provisions that are contrary to law, regulation, or the exercise of reserved management rights cannot be enforced; the Secretary may disapprove any collective bargaining provision whenever he determines that a provision is contrary to law, regulation, or management rights; and matters reserved to the sole and exclusive discretion of the Secretary or his designee will be non-negotiable.

10. Grievance/Arbitration

DHS' grievance and arbitration process generally follows the contours of chapter 71. Under DHS' system, matters excluded from the grievance procedure under 5 U.S.C. 7121(c) will remain excluded from coverage in the DHS system. However, in order to enhance consistency, discourage forum shopping, and provide for faster and more consistent resolution of appeals, the regulations propose to eliminate those adverse actions that are appealable to MSPB (*e.g.*, removals, suspensions of more than 14 days, and demotions) from the scope of the grievance procedure. To ensure fairness, these actions will be appealable under subpart G. Lesser disciplinary and adverse actions will still be covered by the negotiated grievance procedure. Employees alleging discrimination may file a grievance under a negotiated grievance procedure or a complaint with the Equal Employment Opportunity Commission (EEOC), but not both.

Performance appraisal grievances will be handled in a similar manner. An employee can file a grievance and the union can pursue arbitration regarding a performance rating. However, if management subsequently takes an appealable adverse action based on the rating and the employee files an appeal with MSPB under subpart G, any grievance or arbitration will be merged with the MSPB appeal and adjudicated under subpart G.

Finally, subpart E includes a savings provision to make clear that the procedures established under these regulations will not apply to grievances and other administrative proceedings that were already in progress when the affected employee(s) became covered by subpart E.

Adverse Actions—Subpart F

The regulations propose several revisions and additions to the current adverse actions system. These changes are directed at the cumbersome and restrictive requirements for addressing and resolving unacceptable performance and misconduct. The proposed changes streamline the rules and procedures for taking adverse actions, to better support the mission of the Department while ensuring that employees receive due process and fair treatment guaranteed by the Homeland Security Act.

The following sections identify the major changes proposed by this subpart and briefly describe the purpose of each change.

1. Employees Covered

All DHS employees are eligible for coverage under subpart F of the proposed regulations, except where specifically excluded by law or regulation. For example, employees of the Transportation Security Administration are not eligible for coverage under subpart F because they are excluded from coverage under 5 U.S.C. chapter 75, and 5 U.S.C. 9701 does not allow the joint regulations issued by DHS and OPM to cover such employees.

The regulations provide an "initial service period" of one-to-two years for all employees upon appointment to DHS. Prior Federal service counts toward this requirement. Employees who are on time-limited appointments and those serving in an "initial service period" are not covered by this subpart. However, so as to ensure that the rights currently granted preference eligible employees are not diminished, all preference eligible employees are covered by the adverse action protections of subpart F after completing one year of an "initial service period." Furthermore, employees who are in the competitive service and who are removed during an "initial service period" are covered by the adverse action protections of 5 CFR 315.804 and 315.805. The specific length of the "initial service period" will be tied to specific occupations to reflect varying job demands and training needs. For example, certain occupations have long periods of formalized training which impact the ability of management to assess employee job performance. Other occupations require employees to demonstrate skills and competencies that also cannot be adequately measured or assessed within 1 year.

2. Actions Covered

Adverse actions will continue to be defined as they are now in chapter 75 of title 5, U.S. Code, to include removals, suspensions of any length, demotions, and reductions in pay. These regulations propose to change the coverage from furloughs for 30 days or less to furloughs for 90 days or less.

A small number of Federal agencies are covered under the national security provisions of 5 U.S.C. 7532. Under these provisions, an employee may be immediately suspended without pay or removed if the agency head considers the action "necessary in the interests of national security." Before taking such an action, however, the agency head must afford the employee procedural rights as set forth in the statute. An agency head's decision in these cases is not subject to appeal or judicial review. This regulation incorporates the current provisions of the law and makes them applicable to DHS.

3. Mandatory Removal Offenses

This subpart permits the Secretary or designee to identify offenses that have a direct and substantial impact on the ability of the Department to protect homeland security" for example, accepting or soliciting a bribe that would compromise border security or willfully disclosing classified information. These offenses carry a mandatory penalty of removal from Federal service. This change allows management to act swiftly to address and resolve misconduct or unacceptable performance that would be most harmful to the Department's critical mission. These mandatory removal offenses will be identified in advance and made known to all employees. Employees alleged to have committed these offenses will have the right to advance notice, an opportunity to respond, a written decision, a review by an adjudicating official, and a further appeal to an independent DHS panel, as set forth in subpart G of this part. However, only the Secretary or his or her designee can mitigate the penalty for committing a mandatory removal offense.

The regulations do not list the infractions that will constitute mandatory removal offenses. DHS has not yet identified a list of such offenses, and it is important to preserve the Secretary's flexibility to carefully and narrowly determine the offenses that

will fall into this category and to make changes over time. The absence of this flexibility has been problematic at the Internal Revenue Service (IRS) where the IRS Restructuring Act codified mandatory disciplinary offenses in law and limited the agency's ability to make needed changes. The Department will identify mandatory removal offenses well in advance and make sure that employees know what these offenses are. The Department invites public comment on the best and most effective way to provide such notice to employees.

4. Adverse Action Procedures

This subpart retains an employee's right to representation and a written decision but provides shorter advance notice periods and reply periods than are currently required for appealable adverse actions. Except where a mandatory removal offense is involved, employees are entitled to a minimum of 15 days advance notice. In cases involving a mandatory removal offense, the advance notice period is a minimum of 5 days. In all cases, employees are granted a minimum of 5 days to reply, which runs concurrently with these notice periods. These changes facilitate timely resolution of adverse actions while preserving employee rights.

5. Single Process and Standard for Action for Unacceptable Performance and Misconduct

This subpart establishes a single system for taking adverse actions based on misconduct or unacceptable performance. This change represents a return to a simplified approach that existed prior to the 1978 passage of the Civil Service Reform Act and chapter 43 of title 5, U.S. Code.

Congress enacted chapter 43 in part to create a simple, dedicated process for agencies to use in taking adverse actions based on unacceptable performance. Since that time, however, chapter 43 has not worked as Congress intended. In particular, interpretations of chapter 43 have made it difficult for agencies to take actions against poor performers and to have those actions upheld. As a result, agencies have consistently preferred to use the procedures available under chapter 75 of title 5 rather than chapter 43 when taking actions for unacceptable performance.

The regulations eliminate the requirement for a formal, set period for an employee to improve performance before management can take an adverse action. Management selects employees for their positions because the employees are well qualified. In addition, employees must complete an "initial service period" during which they will have learned the specific requirements of their positions. As set forth in subpart D, management must explain to employees what is expected of them when it comes to performance. If an employee fails to perform at an acceptable level, management may use a variety of measures, including training, regular feedback, counseling and, at management's discretion, an improvement period, to address and resolve performance deficiencies. If an employee is still unable or unwilling to perform as expected, it is reasonable for management to take an action against the employee.

We revised the standard for taking an adverse action to require that the Department establish a factual basis for any adverse action and a connection between the action and a legitimate Departmental interest. We replaced the current title 5 "efficiency of the service" standard for action to allay any confusion that might arise from case law linking this standard with the authority to review and mitigate penalties, an authority we generally do not provide third parties in adjudicating DHS cases. We intend no substantive change to the efficiency of the service standard.

Appeals—Subpart G

Subpart G of part 9701 covers employee appeals of certain adverse actions taken under subpart F. As is currently the case, these appealable adverse actions include removals, suspensions of 15 days or more, demotions, and reductions in pay. In addition, the regulations provide for appeals of reductions in pay band and substantially increase the length of furloughs that may be appealed. Suspensions shorter than 15 days and other lesser disciplinary measures are not appealable to MSPB, but may be grieved through a negotiated grievance procedure or agency administrative grievance procedure, whichever is applicable. Furthermore, employees who are in the competitive service and who are removed during the first year of an "initial service period" are provided the appeal rights found in 5 CFR 315.806.

Section 9701 of title 5, U.S. Code, requires that these new appeal regulations provide DHS employees fair treatment, are consistent with the protections of due process, and, to the maximum extent practicable, provide for the expeditious handling of appeals. The law also specifies that modifications to the current chapter 77 of title 5 should further the fair, efficient, and expeditious resolution of appeals.

This subpart establishes procedures and timeframes for filing appeals with MSPB and modifies rules that MSPB will use to process appeals from DHS employees. These regulations are intended to ensure appropriate deference to the adverse actions taken by DHS and to streamline the way MSPB cases are handled while continuing to preserve and safeguard employee due process protections. In addition, they provide for an internal appeals process for "mandatory removal offenses."

As noted earlier in the Supplementary Information, the Secretary and the Director will conduct an ongoing evaluation of the DHS HR system to ensure that it is achieving its intended purposes. As part of this evaluation, the Department and OPM will pay particular attention to the proposed adverse action and appeal procedures established by these regulations. As noted (and discussed in more detail below), those proposed procedures continue to permit employees to appeal most adverse actions to MSPB, despite the fact that DHS and OPM could have established a separate appellate body for all such actions.

In proposing these appellate procedures, the Secretary and the Director were especially mindful of 5 U.S.C. 9701(f)(2), which requires that they consult with MSPB on changes to chapter 77 of title 5. This requirement was met through extensive consultations between members and staffs of MSPB, DHS, and OPM. During those consultations, DHS and OPM officials described specific concerns with existing procedures and discussed the range of appellate options and alternatives that were under consideration. For their part, MSPB officials were particularly constructive in responding to those concerns, offering numerous suggestions to address them, including several modifications to their own rules and regulations.

The appellate procedures proposed below reflect many of those suggestions, as well as the constructive dialogue that gave rise to them. Indeed, the proposal to retain MSPB was predicated on the results of that dialogue. However, the cumulative effect of these changes can be assessed only as they are actually implemented and administered by MSPB. Accordingly, DHS and OPM, with MSPB, intend to conduct a formal evaluation of these appellate procedures after they have been in effect for 2 years in order to determine whether the procedures have given the Department's critical mission due weight and deference and whether additional

modifications to 5 U.S.C. chapter 77 and/or these regulations need to be proposed.

1. Appeals to MSPB

The proposed regulations retain MSPB as the adjudicator of employee appeals of adverse actions, except as described below for mandatory removal offenses. At the same time, the regulations propose new substantive standards that MSPB will apply to DHS cases to improve the appeals process and accommodate and support the agency's critical homeland security mission. The regulations also propose new case-handling procedures to facilitate the efficient and expeditious resolution of appeals.

We gave serious consideration to establishing a DHS internal appeals board to replace MSPB. However, we concluded that the advantages of creating an internal DHS appeals board—greater efficiency of decisionmaking and deference to agency mission and operations among them—could be achieved if MSPB were retained as the appeals body for adverse actions but with substantive and significant procedural modifications. However, for mandatory removal offenses, we decided to establish an internal appeals process that fully preserves due process because we believe that, for these offenses, it is critical that the adjudicator of the appeal be intimately familiar with the mission of DHS in order to understand the particular impact of these offenses on the Department's ability to carry out its mission.

2. Appeals of Mandatory Removal Offenses

An employee will be able to appeal a DHS removal action based on a mandatory removal offense to an adjudicating official, who may conduct a full evidentiary hearing and will issue a written decision. Either party may appeal that decision to an independent DHS Panel.

Option 1

Under this option, DHS and OPM would not include appeal language in the regulation addressing any form of judicial review, but would allow existing governing legal principles to determine the circumstances under which there would be judicial review.

Option 2

We are proposing to adopt the same procedures and standards for review of Panel decisions that we developed for Board decisions. Specifically, under 5 U.S.C. 7703, the United States Court of Appeals for the Federal Circuit has jurisdiction over appeals filed from final orders of MSPB. Under this option the final regulations would provide that Panel decisions are appealable to the three-member MSPB but with a deferential standard of review appropriate for an appellate procedure of this type. MSPB would be required to decide an appeal from a final decision of the Panel within 20 days. All decisions of MSPB, including those decisions on appeals from the Panel, would be subject to judicial review in accordance with 5 U.S.C. 7703. Under this option, judicial deference would be given to the decisions of the Panel because the Panel is charged by regulation with interpreting and implementing the Homeland Security Act and was created to apply its specialized expertise in homeland security matters.

3. MSPB Appellate Procedures

MSPB will continue to have the authority to review and adjudicate actions covered by this subpart (except for mandatory removal offenses) as prescribed in chapter 12 of title 5, U.S. Code. However, these regulations propose to modify certain case processing rules and substantive standards. The initial review and adjudication of adverse action appeals will be governed by current title 5 provisions and MSPB regulations, as well as the modifications identified in this section. The modifications being made to current MSPB requirements will further the mission of DHS without impairing fair treatment and due process protections. Key procedural modifications include the following:

- When there are no material facts in dispute, the adjudicating official must grant a motion for summary judgment without an evidentiary hearing. Currently, appellants are entitled to a hearing.
- The appeal filing deadline, including the deadline for class appeals, is decreased from 30 days to 20 days.
- The adjudicating official's initial decision must be made no later than 90 days after the date on which the appeal is filed. Moreover, if MSPB reviews an initial decision, MSPB must render its final decision no later than 90 days after the close of record. Also, if OPM seeks reconsideration of a final MSPB decision or order, MSPB must render its decision no later than 60 days after receipt of the opposition to OPM's petition in support of such reconsideration.
- Currently, the parties to an appeal may submit unilateral requests for additional time to pursue discovery or settlement. The ability of the parties to unilaterally submit a request for case suspension is eliminated.
- The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion to MSPB, either party can seek to limit any discovery being sought because it is privileged; not relevant; unreasonably cumulative or duplicative; or can be secured from some other source that is more convenient, less burdensome, or less expensive. Discovery can also be limited through such a motion if the burden or expense of providing a response outweighs its benefit. Prior to filing such a motion with MSPB, the parties must confer and attempt to resolve any pending objections. Further, when engaging in discovery, either party can submit only one set of interrogatories, requests for production, and requests for admissions. Additionally, the number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts, and each party may not conduct more than two depositions. However, either party may file a motion requesting MSPB to allow more discovery. A motion will be granted only if MSPB determines that good cause has been shown to justify additional discovery.

All of these modifications will expedite and streamline the appeals process so that both employees and the Department will be able to resolve appeals more quickly and efficiently than is possible today. The proposed regulations also retain due process protections—notice, an opportunity to respond, and a post-action review, either in person or on the record—for removal actions. We provide the same procedural protections for all actions covered in subpart F. Further, these regulations retain the statutory requirement that the appealability of a removal be unaffected by the individual's status under any retirement system.

Section 7701 of title 5, U.S. Code, currently authorizes the Director of OPM to intervene in an MSPB proceeding or to petition MSPB for review of a decision if the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, or regulation under OPM's jurisdiction. Given OPM's responsibility for Governmentwide personnel management, these regulations authorize OPM to intervene in such situations regardless of whether the law, rule or regulation is one that falls under OPM jurisdiction. A similar authority is provided to OPM with

respect to decisions of the independent Panel that will decide appeals of removals based on mandatory removal offenses.

4. Standard of Proof

Currently, actions taken under chapter 75 are sustained if supported by a preponderance of the evidence, and performance actions taken under chapter 43 are sustained if supported by substantial evidence, a lower standard of proof than preponderance. In all cases arising under this subpart, dealing either with performance or conduct, the Department's decision will be sustained if it is supported by substantial evidence. Changing the standard of proof to a single, lower standard regardless of the nature of the action simplifies the appeal process, grants appropriate deference to DHS officials in recognition of the critical nature of the agency mission, and assures consistency without compromising fairness.

5. Affirmative Defenses

The Department's action will not be sustained if MSPB (as is currently the case) determines that (1) a harmful procedural error occurred; (2) the decision was based on any prohibited personnel practice; or (3) the decision was not otherwise in accordance with law. The Board/Panel will defer to OPM and DHS in their interpretation of these regulations and the Homeland Security Act, and will defer to OPM in its interpretation of civil service law.

These regulations require the Department to prove by substantial evidence the factual basis of the charge brought against an employee, but do not permit MSPB or the Panel to reverse the charge based on the way in which the charge is labeled or the conduct is characterized. This will eliminate excessively technical pleading requirements in adverse action proceedings imposed by MSPB and the U.S. Court of Appeals for the Federal Circuit in *King* v. *Nazelrod*, 43 F.3d 663, and similar cases. As long as the employee is on fair notice of the facts sufficient to respond to the allegations of a charge, the Department will have complied with the notice and due process requirements of these regulations.

6. Penalty Review

In all cases arising under this subpart, the penalty selected by the Department may not be reduced or otherwise modified by MSPB or the Panel. This is a significant but necessary departure from current rules permitting MSPB to mitigate penalties in certain circumstances. We have modified the current practice because DHS management is in the best position to determine the penalty that most effectively supports the Department's mission. That decision should not be subject to MSPB or Panel review. However, nothing in these regulations would limit the Secretary or designee's sole and exclusive authority to mitigate any penalty imposed on, or rescind any action taken against, a DHS employee pursuant to subpart F.

7. Attorney Fees

OPM and DHS have simplified the current standard for recovering attorney fees. Under the current two-pronged test set forth in 5 U.S.C. 7701(g), appellants may recover fees if (1) they are prevailing parties and (2) if an award is "in the interest of justice." Much judicial ink has been spilled interpreting both elements of this imprecise standard. Accordingly, in an attempt to clarify the test for recovering attorney fees, the regulations specify that an appellant may recover fees if the action is reversed in its entirety and the Department's action constituted a prohibited personnel practice or was taken in bad faith or without any basis in fact and law. Requiring the Department to pay attorney fees simply because some of its charges were not sustained would deter the Department from taking action in appropriate cases and have a chilling effect on the Department's ability to carry out its mission.

8. Alternative Dispute Resolution

These regulations encourage the use of alternative dispute resolution procedures (ADR) and provide for DHS, OPM, and MSPB to jointly develop expedited appeals procedures. However, because ADR and settlement efforts are most successful when voluntary, the regulations prohibit MSPB from *requiring* ADR or settlement in connection with any action taken under this subpart. Once either party decides that settlement is not desirable, the matter will proceed to adjudication. Eliminating settlement efforts that are contrary to the expressed wishes of one or both of the parties will speed up the adjudication process and strengthen management decisionmaking authority.

Where the parties agree to engage in settlement discussions, the case will be assigned to an official specifically designated for that sole purpose, rather than the official responsible for adjudication. This is necessary to avoid actual or perceived conflicts of interest on the part of MSPB adjudicating officials.

9. Discrimination Allegations

We have decided to retain the current statutory provisions dealing with the processing of mixed cases, *i.e.*, cases involving allegations of discrimination which are also appealable to MSPB. However, we revised those provisions to reflect the establishment of the DHS Panel.

10. Judicial Review

Decisions of MSPB are subject to review by the U.S. Court of Appeals for the Federal Circuit based on the same standard currently provided for in 5 U.S.C. 7703.

Next Steps

The Homeland Security Act provides that the development and implementation of a new HR system for DHS will be carried out with the participation of, and in collaboration with, employee representatives. The DHS Secretary and OPM Director must provide employee representatives with a written description of the proposed new or modified HR system. The description contained in this **Federal Register** notice satisfies this requirement. The Act further provides that employee representatives must be given 30 calendar days to review and make recommendations regarding the proposal. Any recommendations must be given full and fair consideration. If the Secretary and Director do not accept one or more recommendations, they must notify Congress of the disagreement and then meet and confer with employee representatives for at least 30 calendar days in an effort to reach agreement. The Federal Mediation and Conciliation Service may provide assistance at the Secretary's option or if requested by a majority of employee representatives who have made recommendations.

If a proposal is not challenged, it may be implemented immediately. Similarly, when the Secretary and the Director accept any recommendation from employee representatives, the revised proposal may be implemented immediately. If the Secretary and the Director do not fully accept a recommendation, the Secretary may implement the proposal (including any modifications made in response to the recommendations) at any time after 30 calendar days have elapsed since the initiation of congressional notification, consultation, and mediation procedures. To proceed with implementation in this circumstance, the Secretary must determine (in his sole and unreviewable discretion) that further consultation and mediation are unlikely to produce

agreement. The Secretary must notify Congress promptly of the implementation of any such contested proposal.

The Secretary and the Director must develop a method under which each employee representative may participate in any further planning or development in connection with implementation of a proposal. Also, the Secretary and the Director must give each employee or representative adequate access to information to make that participation productive.

DHS plans to make the new labor relations, adverse actions, and appeals provisions effective 30 days after the issuance of interim final regulations later this year. At this time, DHS intends to implement the new job evaluation, pay, and performance management system in phases. The tentative schedule for implementing these provisions is outlined below.

In the first phase, employees of DHS Headquarters, Science and Technology, and Intelligence Analysis and Infrastructure Protection, as well as GS employees of the Coast Guard, will be converted to the new performance management system in the fall of 2004. These employees will be converted to the new job evaluation and pay system in early 2005. At that time, affected employees will be converted to the new system as described in the above summary, with one-time within-grade buyouts where appropriate. The first performance-based pay increases will become effective in late summer 2005 for affected Coast Guard employees, to coincide with the completion of their performance appraisal cycle. The first annual market adjustments for these employees will be made in early 2006. DHS will determine the timing of pay increases for its Headquarters, Science and Technology, and Intelligence Analysis and Infrastructure Protection employees at a later date.

In the second phase, all remaining GS employees in DHS are expected to be covered by the new performance management system no later than fall 2005. These employees would then be converted to the new job evaluation and pay system in early 2006, with one-time within-grade buyouts where appropriate. DHS anticipates that the first pay increases for these employees under the new system will be made effective no later than early 2007. Transportation Security Administration employees (except screeners), Stafford Act employees, and Coast Guard Academy employees will be converted to a similar or identical job evaluation, pay, and performance management system during the second phase.

The Department will determine whether Secret Service Uniformed Division (SSUD) officers should be covered by a similar or identical system. Legislation would be required to alter the SSUD pay system.

Public Participation

DHS and OPM invite interested persons to participate in this rulemaking by submitting written comments, data, or views. Commenters should refer to a specific portion of the proposal, explain the reason for any recommended change, and include supporting data or information.

All comments received in an approved format will be posted in the e-docket. The e-docket will be available online for public inspection before and after the comment closing date. You may also review the hard-copy originals of mailed and hand-delivered comments by visiting the OPM Resource Center, as explained in the **ADDRESSES** section of this preamble.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Electronic Access and Filing

You may access the DHS/OPM e-docket on the Internet at: *http://www.epa.gov/edocket.* This official e-docket will contain the various documents specifically referenced in this Supplementary Information, any public comments received, and other information used by decisionmakers related to the proposed rule. You may use the DHS/OPM e-docket to access available public docket materials online, as well as submit electronic comments during the open comment period.

The U.S. Environmental Protection Agency (EPA) has been designated by the Office of Management and Budget (OMB) as the official Managing Partner in the "e-Rulemaking Initiative." DHS and OPM are pleased to partner with EPA to provide the e-docket for this DHS/OPM proposed rule. As a result of this partnership, you will notice references to EPA when you access the DHS/OPM e-docket.

Public comments will be made available for public viewing in this e-docket system, without change, as DHS/OPM receive them, unless the comment contains copyrighted material, confidential business information, or other information whose public disclosure is restricted by statute. When DHS/OPM identifies a comment containing copyrighted material, we will provide a reference to that material in the version of the comment that is placed in the e-docket.

The e-docket system is DHS/OPM's preferred method for receiving comments. The system is an "anonymous access" system, which means DHS/OPM will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. All comments may be viewed electronically on the e-docket; thus, unless a comment is submitted anonymously, the names of commenters will be public information.

You should ensure that your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked "late," and DHS/OPM are not required to consider them in formulating a final decision.

E.O. 12866, Regulatory Review

DHS and OPM have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is a significant public interest in revisions of the Federal employment system. DHS and OPM have analyzed the expected costs and benefits of the proposed HR system to be adopted for DHS, and that analysis is presented below.

Integral to the administration of the proposed new DHS pay system is a commitment to "manage to budget." Accordingly, the new pay system carries with it potential implications relative to the base pay of individual employees, depending upon local labor market conditions and individual, team, and organizational performance. However, actual payroll costs under this system will be constrained by the amount budgeted for overall DHS payroll expenditures, as is the case with the present GS pay system. Moreover, assuming that a normal, static population will exist over time, DHS anticipates that accessions, separations, and promotions will net out and, as with the present system, not add to the overall cost of administering the system.

The creation of a new DHS pay and performance management system will, however, result in some initial implementation costs, including some payroll related conversion costs (*e.g.*, the "buyout" of within-grade increases). In addition, DHS will incur costs relating to such matters as training (including the cost of overtime pay required to backfill for front-line DHS employees during periods of training), reprogramming automated payroll and HR information systems, developing

and conducting pay surveys to determine future pay adjustments in relation to the labor market, and conducting employee education and communication activities. The extent of these costs will be directly related to the level of comprehensiveness desired by DHS, especially in relation to training in the new system and developing and conducting labor market pay surveys for the wide variety of jobs in DHS.

Programming costs relating to automating the payroll, HR information, and performance management systems and for administering pay in a performance-focused pay system should not be extensive, since such systems already are in use elsewhere in the Federal Government and could be adapted for use by DHS. In some cases, however, DHS could benefit from contracting with outside providers for the development and maintenance of such systems.

DHS estimates the overall costs associated with implementing the new DHS HR system—including the development and implementation of a new pay and performance system, the conversion of current employees to that system, and the creation of the new DHS Labor Relations Board—will be approximately $130 million through FY 2007 (*i.e.*, over a 4-year period); less than $100 million will be spent in any 12-month period.

The primary benefit to the public of this new system resides in the HR flexibilities that will enable DHS to build a high-performance organization focused on mission accomplishment. The new job evaluation, pay, and performance management system provides DHS with an increased ability to attract and retain a more qualified and proficient workforce. The new labor relations, adverse actions, and appeals system affords DHS greater flexibility to manage its workforce in the face of constantly changing threats to the security of our homeland. Taken as a whole, the changes included in these proposed regulations will result in a contemporary, merit-based HR system that focuses on performance, generates respect and trust, and above all, supports the primary mission of DHS—protecting our homeland.

Regulatory Flexibility Act

DHS and OPM have determined that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

E.O. 12988, Civil Justice Reform

This proposed regulation is consistent with the requirements of E.O. 12988. The regulation: would not preempt, repeal, or modify any Federal statute; provides clear legal standards; has no retroactive effects; specifies procedures for administrative and court actions; defines key terms; and is drafted clearly.

E.O. 13132, Federalism

DHS and OPM have determined these proposed regulations would not have Federalism implications because they would apply only to Federal agencies and employees. The proposed regulations would not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

These proposed regulations would not result in the expenditure by State, local, or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

List of Subjects in 5 CFR Part 9701

Administrative practice and procedure, Government employees, Labor management relations, Labor unions, Reporting and recordkeeping requirements, Wages.

Department of Homeland Security.

Tom Ridge,

Secretary.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, under the authority of section 9701 of title 5, United States Code, the Department of Homeland Security and the Office of Personnel Management are proposing to amend title 5, Code of Federal Regulations, by establishing chapter XCVII consisting of part 9701 as follows:

CHAPTER XCVII—DEPARTMENT OF HOMELAND SECURITY HUMAN RESOURCES MANAGEMENT SYSTEM (DEPARTMENT OF HOMELAND SECURITY—OFFICE OF PERSONNEL MANAGEMENT)

PART 9701—DEPARTMENT OF HOMELAND SECURITY HUMAN RESOURCES MANAGEMENT SYSTEM

Subpart A—General Provisions

Sec.

Subpart B—Job Evaluation

General

Job Evaluation Structure

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Subpart C—Pay and Pay Administration

General

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Setting and Adjusting Rate Ranges

Locality and Special Pay Supplements

Performance-Based Pay

Pay Administration

Special Payments

Authority: 5 U.S.C. 9701.

Subpart A—General Provisions

§ 9701.101 Purpose.

This part contains regulations governing the establishment of a new human resources management system within the Department of Homeland Security (DHS), as authorized by 5 U.S.C. 9701. As permitted by section 9701, these regulations modify or waive various statutory provisions that would otherwise be applicable to affected DHS employees. The modified provisions are designed to establish a modern, flexible system that supports DHS mission requirements and efforts to improve employee and organizational performance, while maintaining merit system principles and employee civil service protections. These regulations are issued jointly by the Secretary of Homeland Security and the Director of the Office of Personnel Management (OPM).

§ 9701.102 Applicability and coverage.

(a) The provisions of this part apply to DHS employees who are in a category—

(1) Eligible for coverage under one or more provisions of subparts B through G of this part; and

(2) Approved for coverage by the Secretary or designee under a specific set of provisions as of a specified effective date, at the Secretary's or designee's sole and exclusive discretion after coordination with OPM.

(b) Any new DHS job evaluation, pay, or performance management system covering Senior Executive Service (SES) members must be consistent with the performance-based features and the pay caps applicable to employees covered by the Governmentwide SES pay-for-performance system authorized by 5 U.S.C. chapter 53, subchapter VIII, and applicable implementing regulations issued by OPM. If the Secretary determines that SES members employed by DHS should be covered by job evaluation, pay, or performance management provisions that differ substantially from the Governmentwide SES pay-for-performance system, the Secretary and the Director must issue joint authorizing regulations consistent with all of the requirements of 5 U.S.C. 9701.

(c) The Secretary or designee, at his or her sole and exclusive discretion, may rescind approval granted under paragraph (a)(2) of this section on a prospective basis and prescribe procedures for converting a category of employees to coverage under applicable title 5 provisions.

(d) The regulations in this part do not apply to employees covered by a component of a human resources system established under the authority of a provision outside the waivable chapters of title 5, U.S. Code, identified in § 9701.104. For example, Transportation Security Administration employees, employees appointed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Secret Service Uniformed Division officers, Coast Guard Academy faculty members, and Coast Guard military members are not eligible for coverage under any job evaluation or pay system established under subpart B or C of this part. Similarly, Transportation Security Administration employees also are not eligible for coverage under any performance management system established under subpart D of this part or the adverse action provisions established under subpart F of this part. (Please refer to subparts B through G of this part for specific information regarding the coverage of each subpart.)

(e) Notwithstanding paragraph (d) of this section, nothing in this part prevents the Secretary or other authorized DHS official from using an independent discretionary authority to establish a parallel system that follows some or all of the requirements in this part for a category of employees who are not eligible for coverage under the authority provided by 5 U.S.C. 9701.

§ 9701.103 Definitions.

In this part:

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

Coordination means the process by which DHS, after appropriate staff-level consultation, officially provides OPM with notice of a proposed action and intended effective date. If OPM concurs, or does not respond to that notice within 30 calendar days, DHS may proceed with the proposed action. However, in the event that OPM indicates the matter has

Governmentwide implications or consequences, DHS will not proceed until the matter is resolved. The coordination process is intended to give due deference to the flexibilities afforded DHS by the Homeland Security Act and the regulations in this part, without compromising OPM's institutional responsibility, as codified in 5 U.S.C. chapter 11 and Executive Order 13197 of January 18, 2001, to provide Governmentwide oversight in human resources management programs and practices.

Department or *DHS* means the Department of Homeland Security.

Director means the Director of the Office of Personnel Management.

Employee means an employee within the meaning of that term in 5 U.S.C. 2105, except as otherwise provided in this subpart for specific purposes.

General Schedule or *GS* means the General Schedule classification and pay system established under chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code.

OPM means the Office of Personnel Management.

Secretary means the Secretary of Homeland Security or, as authorized, the Deputy Secretary of Homeland Security.

Secretary or designee means the Secretary or a DHS official authorized to act for the Secretary in the matter concerned who—

(1) Reports directly to the Secretary; or

(2) Serves as the Chief Human Capital Officer for DHS.

§ 9701.104 Scope of authority.

Subject to the requirements and limitations in 5 U.S.C. 9701, the provisions in the following chapters of title 5, U.S. Code, and any related regulations, may be waived or modified in exercising the authority in 5 U.S.C. 9701:

(a) Chapter 43, dealing with performance appraisal systems;

(b) Chapter 51, dealing with General Schedule job classifications;

(c) Chapter 53, dealing with pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees;

(d) Chapter 71, dealing with labor relations;

(e) Chapter 75, dealing with adverse actions and certain other actions; and

(f) Chapter 77, dealing with the appeal of adverse actions and certain other actions.

§ 9701.105 DHS regulations.

DHS may issue internal Departmental directives to further define the design characteristics of any system established in accordance with this part.

§ 9701.106 Relationship to other provisions.

(a) DHS employees who are covered by a system established under this part are considered to be covered by chapters 43, 51, 53, 71, 75, and 77 of title 5, U.S. Code, for the purpose of applying other provisions of law or Governmentwide regulations outside those chapters to DHS employees, except as specifically provided in this part or in DHS regulations.

(b) Selected examples of provisions that continue to apply to any eligible DHS employees (despite coverage under subparts B through G of this part) include, but are not limited to, the following:

(1) Foreign language awards for law enforcement officers under 5 U.S.C. 4521–4523;

(2) Pay for firefighters under 5 U.S.C. 5545b;

(3) Differentials for duty involving physical hardship or hazard under 5 U.S.C. 5545(d);

(4) Recruitment, relocation, and retention payments under 5 U.S.C. 5753–5754;

(5) Physicians' comparability allowances under 5 U.S.C. 5948; and

(6) The higher cap on relocation bonuses for law enforcement officers established by section 407 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Public Law 101–509).

(c) The following provisions do not apply to DHS employees covered by a DHS job evaluation and pay system established under subparts B and C in place of the General Schedule:

(1) Time-in-grade restrictions that apply to competitive service GS positions under 5 CFR part 300, subpart F;

(2) Supervisory differentials under 5 U.S.C. 5755; and

(3) Law enforcement officer special rates and geographic adjustments under sections 403 and 404 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Public Law 101–509).

(d) Nothing in this part waives, modifies or otherwise affects the employment discrimination laws that the Equal Employment Opportunity Commission (EEOC) enforces under 42 U.S.C. 2000e *et seq.*, 29 U.S.C. 621 *et seq.*, 29 U.S.C. 791 *et seq.*, and 29 U.S.C. 206(d). Employees and applicants for employment in DHS will continue to be covered by EEOC's Federal sector regulations found at 29 CFR part 1614.

Subpart B—Job Evaluation

General

§ 9701.201 Purpose.

This subpart contains regulations establishing a modified job evaluation structure and rules for covered DHS employees and positions in place of the classification structure and rules in 5 U.S.C. chapter 51 and the job grading system in 5 U.S.C. chapter 53, subchapter IV.

§ 9701.202 Coverage.

(a) This subpart applies to eligible DHS employees and positions listed in paragraph (b) of this section, subject to approval by the Secretary or designee under § 9701.102(a)(2).

(b) The following employees and positions are eligible for coverage under this subpart:

(1) Employees and positions that would otherwise be covered by the General Schedule classification system established under 5 U.S.C. chapter 51;

(2) Employees and positions that would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376; and

(4) Members of the Senior Executive Service who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to § 9701.102(b).

§ 9701.203 Waivers.

(a) The provisions of 5 U.S.C. chapter 51 and 5 U.S.C. 5346, and related regulations, are waived except as provided in § 9701.106 and paragraph (b) of this section.

(b) Section 5108 of title 5, U.S. Code, dealing with the classification of positions above GS–15, is not waived or modified.

(c) For the purpose of applying provisions of title 5, U.S. Code, and title 5, Code of Federal Regulations, that are not otherwise waived or modified by this subpart, the term "job evaluation" includes "classification" and "reclassification". (*See also* § 9701.106.)

§ 9701.204 Definitions.

In this subpart:

Band means a work level or pay range within an occupational cluster.

Job evaluation means the process of evaluating or classifying a job or position to determine its relative value to an organization by assigning it to an occupational series, cluster, and band for pay and other related purposes. This term does not refer to the evaluation or appraisal of an employee's performance

under a performance management system established under subpart D of this part.

Occupational cluster means a grouping of one or more associated or related occupations or positions.

Occupational series means the four-digit number OPM or DHS assigns to a group or family of similar positions for identification purposes (for example: 0110, Economist Series; 1410, Librarian Series).

Position or *Job* means the duties, responsibilities, and related competency requirements that are assigned to an employee whom the Secretary or designee approves for coverage under § 9701.202(a).

§ 9701.205 Relationship to other provisions.

(a) Any job evaluation program described under this subpart must be established in conjunction with the pay system described in subpart C of this part.

(b) As provided in the definition of "conditions of employment" in § 9701.504, any job evaluation program established under this subpart is not subject to collective bargaining. This bar on collective bargaining applies to all aspects of the job evaluation program, including coverage determinations, the design of the job evaluation structure, and job evaluation methods, criteria, and administrative procedures and arrangements.

Job Evaluation Structure

§ 9701.211 Occupational clusters.

For purposes of evaluating positions, DHS may establish occupational clusters in coordination with OPM based on factors such as mission; nature of work; qualifications, competencies, or skill sets; typical career or pay progression patterns; relevant labor-market features; and other characteristics of those occupations or positions. DHS must document in writing the criteria for grouping occupations or positions into occupational clusters.

§ 9701.212 Bands.

(a)(1) For purposes of identifying relative levels of work and corresponding pay ranges, DHS may establish one or more bands within each occupational cluster in coordination with OPM. Each occupational cluster may include, but is not limited to, the following bands:

(i) Entry/Developmental—involving work that focuses on gaining the competencies and skills needed to perform successfully in a Full Performance band through appropriate formal training and/or on-the-job experience.

(ii) Full Performance—involving work that requires the successful completion of any required entry-level training and/or developmental activities necessary to independently perform the full range of non-supervisory duties of a position in an occupational cluster.

(iii) Senior Expert—involving work that requires an extraordinary level of specialized knowledge or expertise upon which DHS relies for the accomplishment of critical mission goals and objectives; reserved for a limited number of non-supervisory employees.

(iv) Supervisory—reserved primarily for first-level supervisors.

(2) DHS must document the definitions for each band which specify the type and range of difficulty and responsibility; qualifications, competencies, or skill sets; or other characteristics of the work encompassed by the band.

(b) DHS may establish qualification standards and requirements for each occupational cluster, occupational series, and/or band in coordination with OPM.

Job Evaluation Process

§ 9701.221 Job evaluation requirements.

(a) DHS must develop a methodology for describing and documenting the duties, qualifications, and other requirements of categories of jobs, and DHS must make such descriptions and documentation available to affected employees.

(b) An authorized agency official must—

(1) Assign occupational series to jobs consistent with occupational series definitions established by OPM under 5 U.S.C. 5105 and 5346 or by DHS in coordination with OPM; and

(2) Apply the criteria and definitions required by § 9701.211 and § 9701.212 to assign jobs to an appropriate occupational cluster and band.

(c) DHS must establish procedures for evaluating jobs and may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of jobs as it considers necessary for the purposes of this section.

(d) Job evaluation decisions become effective on the date designated by the authorized agency official who makes the decision.

(e) DHS must establish a plan to review the accuracy of job evaluation decisions.

§ 9701.222 Reconsidering job evaluation decisions.

(a) An employee may request that DHS reconsider the occupational series or pay system assignment of the employee's official position of record. An employee may not request that DHS reconsider any other job evaluation determination made under this subpart (*e.g.*, an employee's placement in a band or cluster).

(b) DHS must establish policies and procedures for handling reconsideration requests.

(c) DHS reconsideration decisions made under this section are final.

Transitional Provisions

§ 9701.231 Conversion.

(a) This section describes the transitional provisions that apply when DHS positions and employees are converted to a job evaluation system established under this subpart. Affected positions and employees may convert from the GS system, a prevailing rate system, the SL/ST system, or the SES system, as provided in § 9701.202. For the purpose of this section, the terms "convert," "converted," and "converting" refer to positions and employees that become covered by the job evaluation system as a result of a coverage determination made under § 9701.102(a)(2) and exclude employees who are reassigned or transferred from a noncovered position to a position already covered by the DHS system.

(b) DHS must prescribe policies and procedures for converting the GS and prevailing rate grade of a position to a band and for converting SL/ST and SES positions to a band upon initial implementation of the DHS job evaluation system. Such procedures must include provisions for converting an employee who is retaining a grade under 5 U.S.C. chapter 53, subchapter VI, immediately prior to conversion. As provided in § 9701.373, DHS must convert employees without a reduction in an employee's rate of basic pay (taking into account any applicable locality payment, special rate, or other similar supplemental pay).

§ 9701.232 Special transition rules for Federal Air Marshal Service.

Notwithstanding any other provision in this subpart, if DHS transfers Federal Air Marshal Service positions from the Transportation Security Administration (TSA) to another organization within DHS, DHS may cover those positions under a job evaluation system that is parallel to the job evaluation system that was applicable to the Federal Air Marshal Service within TSA. DHS may modify that system after coordination

with OPM. DHS may prescribe rules for converting Federal Air Marshal Service employees to any new job evaluation system that may subsequently be established under this subpart.

Subpart C—Pay and Pay Administration

General

§ 9701.301 Purpose.

This subpart contains regulations establishing pay structures and pay administration rules for covered DHS employees in place of the pay structures and pay administration rules established under 5 U.S.C. chapter 53, as authorized by 5 U.S.C. 9701. These regulations are designed to provide DHS with the flexibility to allocate available funds strategically in support of DHS mission priorities and objectives. Various features that link pay to employees' performance ratings are designed to promote a high-performance culture within DHS.

§ 9701.302 Coverage.

(a) This subpart applies to eligible DHS employees in the categories listed in paragraph (b) of this section, subject to approval by the Secretary or designee under § 9701.102(a)(2).

(b) The following employees are eligible for coverage under this subpart:

(1) Employees who would otherwise be covered by the General Schedule pay system established under 5 U.S.C. chapter 53, subchapter III;

(2) Employees who would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376; and

(4) Members of the Senior Executive Service who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to § 9701.102(b).

§ 9701.303 Waivers.

(a) The provisions of 5 U.S.C. chapter 53, and related regulations, are waived except as provided in § 9701.106 and paragraphs (b) through (e) of this section.

(b) The following provisions of 5 U.S.C. chapter 53 are not waived or modified:

(1) Section 5307, dealing with the aggregate limitation on pay;

(2) Sections 5311 through 5318, dealing with Executive Schedule positions; and

(3) Section 5377, dealing with the critical pay authority.

(c) The following provisions of 5 U.S.C. chapter 53 are modified but not waived:

(1) Section 5371 is modified to allow DHS, in coordination with OPM, to apply the provisions of 38 U.S.C. chapter 74 to health care positions covered by section 5371 in lieu of any DHS pay system established under this subpart or the following provisions of title 5, U.S. Code: chapters 51, 53, and 61, and subchapter V of chapter 55. The reference to "chapter 51" in section 5371 is deemed to include a job evaluation system established under subpart B of this part.

(2) Section 5373 is modified to raise the limit on certain rates of basic pay fixed by administrative action (including any applicable locality payment or supplement) to the rate for level III of the Executive Schedule. Notwithstanding § 9701.302(a), any DHS employee otherwise covered by section 5373 is eligible for coverage under the modified provisions established under this paragraph, subject to approval by the Secretary or designee under § 9701.102(a)(2).

(3) Section 5379 is modified to allow DHS and OPM to establish and administer a modified student loan repayment program for DHS employees, except that DHS may not make loan payments for any noncareer appointees to the SES (as defined in 5 U.S.C. 3132(a)(7)) or for any employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character. Notwithstanding § 9701.302(a), any DHS employee otherwise covered by section 5379 is eligible for coverage under the modified provisions established under this paragraph, subject to approval by the Secretary or designee under § 9701.102(a)(2).

(d) In approving the coverage of employees who would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV, DHS may limit the waiver so that affected employees remain entitled to environmental or other differentials established under 5 U.S.C. 5343(c)(4) and night shift differentials established under 5 U.S.C. 5343(f) if such employees are grouped in separate occupational clusters (established under subpart B of this part) that are limited to employees who would otherwise be covered by a prevailing rate system.

(e) Employees in SL/ST positions and SES members who are covered by a basic pay system established under this subpart are considered to be paid under 5 U.S.C. 5376 and 5382, respectively, for the purpose of applying 5 U.S.C. 5307(d).

§ 9701.304 Definitions.

In this part:

48 contiguous States means the States of the United States, excluding Alaska and Hawaii, but including the District of Columbia.

Band has the meaning given that term in § 9701.204.

Band rate range means the range of rates of basic pay (excluding any locality pay supplements or special pay supplements) applicable to employees in a particular band, as described in § 9701.321. Each band rate range is defined by a minimum and maximum rate.

Basic pay means an employee's rate of pay before any deductions and exclusive of additional pay of any kind, except as expressly provided by law or regulation. For the specific purposes prescribed in §§ 9701.332(c) and 9701.333, respectively, basic pay includes locality pay supplements and special pay supplements.

Control point means a specified rate in a band rate range used to limit initial pay setting or pay progression as described in § 9701.321(d).

Demotion means a reduction to a lower band within the same occupational cluster or a reduction to a lower band in a different occupational cluster under rules prescribed by DHS pursuant to § 9701.355.

Locality pay supplement means a geographic-based addition to basic pay, as described in § 9701.332.

Occupational cluster has the meaning given that term in § 9701.204.

Promotion means an increase to a higher band within the same occupational cluster or an increase to a higher band in a different occupational cluster under rules prescribed by DHS pursuant to § 9701.355.

Rating of record has the meaning given that term in § 9701.404.

SES means the Senior Executive Service established under 5 U.S.C. chapter 31, subchapter II.

SL/ST refers to an employee serving in a senior-level position paid under 5 U.S.C. 5376. The term "SL" identifies a senior-level employee covered by 5 U.S.C. 3324 and 5108. The term "ST" identifies an employee who is appointed under the special authority in 5 U.S.C. 3325 to a scientific or professional position established under 5 U.S.C. 3104.

Special pay supplement means an addition to basic pay for a particular category of employees to address staffing problems, as described in

§ 9701.333. A special pay supplement is paid in place of any lesser locality pay supplement that would otherwise apply.

Unacceptable performance has the meaning given that term in § 9701.404.

Unacceptable rating of record means a rating of record indicating unacceptable performance.

§ 9701.305 Bar on collective bargaining.

As provided in the definition of *conditions of employment* in § 9701.504, any pay program established under authority of this subpart is not subject to collective bargaining. This bar on collective bargaining applies to all aspects of the pay program, including coverage decisions, the design of pay structures, the setting and adjustment of pay levels, pay administration rules and policies, and administrative procedures and arrangements.

Overview of Pay System

§ 9701.311 Major features.

DHS will establish a pay system that governs the setting and adjusting of covered employees' rates of pay. The DHS pay system will include the following features:

(a) A structure of rate ranges linked to various bands for each occupational cluster, in alignment with the job evaluation structure described in subpart B of this part;

(b) Policies regarding the setting and adjusting of basic pay ranges based on mission requirements, labor market conditions, and other factors, as described in §§ 9701.321 through 9701.322;

(c) Policies regarding the setting and adjusting of supplements to basic pay based on local labor market conditions and other factors, as described in §§ 9701.331 through 9701.334;

(d) Policies regarding employees' eligibility for pay increases based on adjustments in rate ranges and supplements, as described in §§ 9701.323 and 9701.335;

(e) Policies regarding performance-based pay increases, as described in §§ 9701.341 through 9701.345;

(f) Policies on basic pay administration, including movement between occupational clusters, as described in §§ 9701.351 through 9701.356;

(g) Policies regarding special payments that are not basic pay, as described in §§ 9701.361 through 9701.363; and

(h) Linkages to employees' performance ratings of records, as described in subpart D of this part.

§ 9701.312 Maximum rates.

(a) DHS may not pay any employee an annual rate of basic pay in excess of the rate for level III of the Executive Schedule, except as provided in paragraph (b) of this section.

(b) DHS may establish the maximum annual rate of basic pay for members of the SES at the rate for level II of the Executive Schedule if DHS obtains the certification specified in 5 U.S.C. 5307(d).

§ 9701.313 DHS Responsibilities.

DHS responsibilities in implementing this subpart include the following:

(a) Providing OPM with information regarding the implementation of the programs authorized under this subpart at OPM's request;

(b) Participating in any interagency pay coordination council or group established by OPM to ensure that DHS pay policies and plans are coordinated with other agencies; and

(c) Fulfilling all other responsibilities prescribed in this subpart.

Setting and Adjusting Rate Ranges

§ 9701.321 Structure of bands.

(a) In coordination with OPM, DHS may establish ranges of basic pay for bands, with minimum and maximum rates set and adjusted as provided in § 9701.322. A band may include control points, as described in paragraph (d) of this section. Rates must be expressed as annual rates.

(b) For each band within an occupational cluster, DHS will establish a common rate range that applies in all locations, except as provided in paragraph (c) of this section.

(c) DHS may establish a different rate range for employees in a band who are stationed in locations outside the contiguous 48 States.

(d) DHS may establish control points within a band that limit initial pay-setting or pay progression for specified categories of employees. DHS may require that employees meet certain criteria (*e.g.*, performance rating) before exceeding certain control points.

§ 9701.322 Setting and adjusting rate ranges.

(a) Within its sole discretion, DHS, after coordination with OPM, may set and adjust the rate ranges established under § 9701.321. In determining the rate ranges, DHS and OPM may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.

(b) In coordination with OPM, DHS may determine the effective date of newly set or adjusted band rate ranges. Generally, these rate ranges will be adjusted on an annual basis.

(c) DHS may provide different rate range adjustments for different occupational clusters or for different bands within an occupational cluster.

(d) For a given band, DHS may provide rate range adjustments in locations outside the contiguous 48 States that differ from the adjustments within the contiguous 48 States. DHS must take into account any cost-of-living allowance received by employees stationed outside the contiguous 48 States in determining the appropriate amount of the band rate range adjustment.

(e) DHS may adjust the minimum and maximum rates of a band by different percentages.

§ 9701.323 Eligibility for pay increase associated with a rate range adjustment.

(a) An employee who meets or exceeds performance expectations (*i.e.*, has a rating of record above the unacceptable performance level) must receive an increase in basic pay equal to the percentage value of any increase in the minimum rate of the employee's band resulting from a rate range adjustment under § 9701.322. The pay increase takes effect at the same time as the corresponding rate range adjustment, except as provided in paragraph (d) of this section.

(b) An employee who has an unacceptable rating of record may not receive a pay increase as a result of a rate range adjustment. The denial of this increase is not considered an adverse action under subpart F of this part.

(c) If an employee does not have a rating of record, he or she must be deemed to meet or exceed performance expectations and is entitled to receive an increase based on the rate range adjustment, as provided in paragraph (a) of this section.

(d) DHS may adopt policies under which an employee who is initially denied a pay increase under this section (based on an unacceptable rating of record) may receive, at management's discretion, a delayed increase after demonstrating significantly improved performance and receiving a new rating of record. Any such delayed increase will be made effective prospectively.

Locality and Special Pay Supplements

§ 9701.331 General.

The basic pay ranges established under §§ 9701.321 through 9701.323 may be supplemented by locality and special pay supplements, as described in §§ 9701.332 through 9701.335. These supplements are expressed as a

percentage of basic pay and are set and adjusted as described in § 9701.334.

§ 9701.332 Locality pay supplements.

(a) For each band rate range and in coordination with OPM, DHS may establish locality pay supplements that apply in specified locality pay areas. Locality pay supplements apply to employees whose official duty station is located in the given area. DHS may provide different locality pay supplements for different occupational clusters or for different bands within the same occupational cluster.

(b) In coordination with OPM, DHS may set the boundaries of locality pay areas. If DHS does not use the locality pay areas established by the President's Pay Agent under 5 U.S.C. 5304, it may make boundary changes by regulation or other means. Judicial review of any DHS regulation on boundary changes is limited to whether or not any regulation was promulgated in accordance with 5 U.S.C. 553. A DHS decision to apply the boundaries established under 5 U.S.C. 5304 does not require regulations and is not subject to judicial review.

(c) Locality pay supplements are considered basic pay for the following purposes:

(1) Retirement under 5 U.S.C. chapter 83 or 84;

(2) Life insurance under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, or similar payments under other legal authority;

(4) Severance pay under 5 U.S.C. 5595;

(5) Other payments and adjustments authorized under this subpart as specified by DHS internal regulations;

(6) Other payments and adjustments under other statutory or regulatory authority that are basic pay for the purpose of locality-based comparability payments under 5 U.S.C. 5304; and

(7) Any provisions for which DHS locality pay supplements must be treated as basic pay by law.

§ 9701.333 Special pay supplements.

In coordination with OPM, DHS may establish special pay supplements that provide higher pay levels for subcategories of employees within an occupational cluster if warranted by current or anticipated recruitment and/or retention needs. DHS may establish rules necessary to implement such supplements. Any special pay supplement must be treated as basic pay for the same purposes as locality pay supplements, as described in § 9701.332(c), and for the purpose of computing cost-of-living allowances and post differentials in nonforeign areas under 5 U.S.C. 5941.

§ 9701.334 Setting and adjusting locality and special pay supplements.

(a) Within its sole discretion, DHS, after coordination with OPM, may set and adjust locality and special pay supplements. In determining the amounts of the supplements, DHS and OPM may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and other relevant factors.

(b) In coordination with OPM, DHS may determine the effective date of newly set or adjusted locality and special pay supplements. Generally, established supplements will be reviewed for possible adjustment on an annual basis in conjunction with rate range adjustments under § 9701.322.

§ 9701.335 Eligibility for pay increase associated with a supplement adjustment.

(a) An employee who meets or exceeds performance expectations (*i.e.*, has a rating of record above the unacceptable performance level) is entitled to the pay increase resulting from an increase in any applicable locality or special pay supplement authorized by DHS. This includes an increase resulting from the initial establishment and setting of a special pay supplement. The pay increase takes effect at the same time as the applicable supplement is set or adjusted, except as provided in paragraph (d) of this section.

(b) An employee who has an unacceptable rating of record may not receive a pay increase as a result of an increase in an applicable locality or special pay supplement. DHS may determine the method of preventing a pay increase in this circumstance. If DHS chooses to reduce the employee's rate of basic pay by the amount necessary to prevent an increase, this reduction will not be considered an adverse action under subpart F of this part.

(c) If an employee does not have a rating of record, he or she must be deemed to meet or exceed performance expectations and is entitled to any pay increase associated with a supplement adjustment, as provided in paragraph (a) of this section.

(d) DHS may adopt policies under which an employee who is initially denied a pay increase under this section (based on an unacceptable rating of record) may receive, at management's discretion, a delayed increase after demonstrating significantly improved performance and receiving a new rating of record. Any such delayed increase will be made effective prospectively.

Performance-Based Pay

§ 9701.341 General.

Sections 9701.342 through 9701.345 describe various types of performance-based pay increases that are part of the pay system established under this subpart. Generally, these within-band pay increases are directly linked to an employee's rating of record (as assigned under the performance management system described in subpart D of this part). These provisions are designed to provide DHS with the flexibility to allocate available funds based on performance as a means of fostering a high-performance culture that supports mission accomplishment. While performance measures primarily focus on an employee's contributions (as an individual or as part of a team) in accomplishing work assignments and achieving mission results, performance also may be reflected in the acquisition and demonstration of required competencies.

§ 9701.342 Performance pay increases.

(a) *Overview.* The DHS pay system provides employees in a Full Performance or higher band with increases in basic pay based on individual performance ratings of record as assigned under a system established under subpart D of this part. The rating of record used as the basis for a performance pay increase is the one assigned for the most recently completed appraisal period, except that if an employee's current performance is determined to be inconsistent with that rating, an authorized agency official must prepare a more current rating of record, subject to the requirements of subpart D of this part. The DHS pay system uses pay pool controls to allocate pay increases based on performance points that are directly linked to the employee's rating of record, as described in this section. Performance pay increases are a function of the amount of money in the performance pay pool, the relative point value placed on ratings, and the distribution of ratings within that performance pay pool.

(b) *Performance pay pools.* (1) DHS will establish pay pools to allocate monies budgeted for performance pay increases.

(2) Each pay pool covers a defined group of DHS employees, as determined by DHS.

(3) The Secretary or designee may determine the size of the pay pools and may adjust those amounts based on overall levels of organizational performance or contribution to the Department's mission.

(4) In allocating the monies to be budgeted for performance pay increases, the Secretary or designee must take into account the average value of within-grade and quality step increases under the General Schedule, as well as amounts that otherwise would have been spent on promotions among positions placed in the same band.

(c) *Performance point values.* (1) DHS will establish point values that correspond to the performance rating levels established under subpart D of this part, so that a point value is attached to each rating level. For example, in a four-level rating program, the point value pattern could be 4–2–1–0, where 4 points are assigned to the highest (outstanding) rating and 0 points to an unacceptable rating. Performance point values will determine performance pay increases.

(2) DHS will establish a point value pattern for each pay pool. Different pay pools may have different point value patterns.

(3) DHS must assign zero performance points to any employee with an unacceptable rating of record.

(d) *Performance payout.* (1) DHS will determine the value of a performance point, expressed as a percentage of an employee's rate of basic pay or as a fixed dollar amount.

(2) To determine an individual employee's performance payout, DHS will multiply the point value determined under paragraph (d)(1) of this section by the number of performance points credited to the employee.

(3) To the extent that the adjustment does not cause the employee's rate of basic pay to exceed the maximum rate (or applicable control point) of the employee's band rate range, DHS will pay the performance payout as an adjustment in the employee's annual rate of basic pay. Any excess amount may be granted as a lump-sum payment, which may not be considered basic pay for any purpose.

(4) In coordination with OPM, DHS may determine the effective date of adjustments in basic pay under paragraph (d)(3) of this section.

(e) *Proration of performance payouts.* DHS may establish policies governing the proration of performance payouts for employees who, during the period between performance pay adjustments, are—

(1) Hired or promoted;

(2) In a leave without pay status; or

(3) In other circumstances where proration is considered appropriate.

(f) *Adjustments for employees returning after performing honorable service in the uniformed services.* DHS will establish policies governing how it sets the rate of basic pay prospectively for an employee who leaves a DHS position to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and returns through the exercise of a reemployment right provided by law, Executive order, or regulation under which accrual of service for seniority-related benefits is protected (*e.g.*, 38 U.S.C. 4316). Those policies must credit the employee with intervening performance pay adjustments based on the employee's last DHS rating of record. For employees who have no such rating of record, DHS policies must prescribe a methodology to be used in applying performance pay adjustments that occurred during the employee's absence.

§ 9701.343 Within-band reductions.

Subject to the adverse action procedures set forth in subpart F of this part, DHS may reduce an employee's rate of basic pay within a band for unacceptable performance or conduct. A reduction under this section may not cause an employee's rate of basic pay to fall below the minimum rate of the employee's band rate range. These reductions may be made effective at any time.

§ 9701.344 Special within-band increases for certain employees in a Senior Expert band.

DHS may approve special within-band basic pay increases for employees within a Senior Expert or equivalent band established under § 9701.212 who possess exceptional skills in critical areas or who make exceptional contributions to mission accomplishment. Increases under this section are in addition to any performance pay increases made under § 9701.342 and may be made effective at any time.

§ 9701.345 Developmental pay adjustments.

DHS may establish policies and procedures for adjusting the pay of employees in an Entry/Developmental band. Those policies and procedures may use measures that link pay progression to the demonstration of required knowledge, competencies, skills, attributes, or behaviors. DHS may set standard timeframes for progression through an Entry/Developmental band while allowing an employee to progress at a slower or faster rate based on his or her performance, demonstration of required competencies or skills, and/or other factors.

Pay Administration

§ 9701.351 Setting an employee's starting pay.

In coordination with OPM, DHS may establish policies governing the starting rate of pay for an employee, including—

(a) An individual who is newly appointed or reappointed to the Federal service;

(b) An employee transferring to DHS from another Federal agency; and

(c) A DHS employee who moves from a noncovered position to a position already covered by this subpart.

§ 9701.352 Use of highest previous rate.

DHS may establish policies governing the discretionary use of an individual's highest previous rate of basic pay received as a Federal employee or as an employee of a Coast Guard nonappropriated fund instrumentality (NAFI) in setting pay upon reemployment, transfer, reassignment, promotion, demotion, placement in a different occupational cluster, or change in type of appointment. For this purpose, basic pay may include a locality-based payment or supplement under circumstances approved by DHS. If an employee in a Coast Guard NAFI position is converted to an appropriated fund position under the pay system established under this subpart, DHS must use the existing NAFI rate to set pay upon conversion.

§ 9701.353 Setting pay upon promotion.

(a) Except as otherwise provided in this section, upon an employee's promotion, DHS must provide an increase in the employee's rate of basic pay equal to the greater of—

(1) 8 percent; or

(2) The amount necessary to reach the minimum rate of the higher band.

(b) DHS may prescribe rules providing for an increase other than the amount specified in paragraph (a) of this section in the case of—

(1) An employee promoted from an Entry/Developmental band to a Full Performance band (consistent with the pay progression plan established for the Entry/Developmental band);

(2) An employee who was demoted and is then repromoted back to the higher band, if necessary to prevent the employee from receiving a rate of basic pay higher than the rate the employee would have received if he or she had not been demoted; or

(3) Employees in other circumstances specified by DHS internal regulations.

(c) An employee receiving a retained rate (*i.e.*, a rate above the maximum of the band) before promotion is entitled to a rate of basic pay after promotion that is the greater of—

(1) The rate that is 8 percent higher than the maximum rate of the employee's current band;

(2) The minimum rate of the employee's new band rate range; or

(3) The employee's existing rate of basic pay (which may continue as a retained rate if the rate does not fit within the employee's newly applicable band).

(d) DHS may determine the circumstances under which and the extent to which any locality or special pay supplements are treated as basic pay in applying the promotion increase rules in this section.

§ 9701.354 Setting pay upon demotion.

DHS may prescribe rules governing how to set an employee's pay when he or she is demoted. The rules must distinguish between demotions under adverse action procedures (as defined in subpart F of this part) and other demotions (*e.g.*, due to expiration of a temporary promotion or canceling of a promotion during a new supervisor's probationary period).

§ 9701.355 Setting pay upon movement to a different occupational cluster.

DHS may prescribe rules governing how to set an employee's pay when he or she moves voluntarily or involuntarily to a position in a different occupational cluster, including rules for determining whether such a movement is to a higher or lower band for the purpose of setting pay upon promotion or demotion under §§ 9701.353 and 9701.354, respectively.

§ 9701.356 Pay retention.

(a) Subject to the requirements of this section and in coordination with OPM, DHS must prescribe policies governing the application of pay retention. Pay retention prevents a reduction in basic pay that would otherwise occur by preserving the former rate of basic pay within the employee's new band or by establishing a retained rate that exceeds the maximum rate of the new band.

(b) Pay retention must be based on the employee's rate of basic pay in effect immediately before the action that would otherwise reduce the employee's rate. A retained rate must be compared to the range of rates of basic pay applicable to the employee's position.

(c) Under the DHS pay system, a retained rate is a frozen rate that is not adjusted in conjunction with rate range adjustments.

§ 9701.357 Miscellaneous.

(a) Except in the case of an employee with an unacceptable rating of record, an employee's rate of basic pay may not be less than the minimum rate of the employee's band.

(b) Except as provided in § 9701.355, an employee's rate of basic pay may not exceed the maximum rate of the employee's band rate range.

(c) DHS must follow the rules for establishing pay periods and computing rates of pay in 5 U.S.C. 5504 and 5505, as applicable. For employees covered by 5 U.S.C. 5504, annual rates of pay must be converted to hourly rates of pay in computing payments received by covered employees.

(d) DHS may establish rules governing the movement of employees to or from a band rate range that is augmented by a special pay supplement.

(e) For the purpose of applying the reduction-in-force provisions of 5 CFR part 351, DHS must establish representative rates for all band rate ranges.

(f) If a DHS employee moves from the pay system established under this subpart to a higher-level GS position within DHS, DHS may provide for a special increase prior to the employee's movement in recognition that the employee will not be eligible for a promotion increase under the GS system.

Special Payments

§ 9701.361 Special skills payments.

DHS may establish additional payments for specializations for which the incumbent is trained and ready to perform at all times. DHS may determine the amount of the payments and the conditions for eligibility, including any performance or service agreement requirements. Payments may be made at the same time as basic pay or in periodic lump-sum payments. Special skills payments are not basic pay for any purpose and may be terminated or reduced at any time without triggering pay retention or adverse action procedures.

§ 9701.362 Special assignment payments.

DHS may authorize additional payments for employees serving on special assignments in positions placing significantly greater demands on the employee than other assignments within the employee's band. DHS may determine the amount of the payments and the conditions for eligibility, including any performance or service agreement requirements. Payments may be made at the same time as basic pay or in periodic lump-sum payments. Special assignment payments are not basic pay for any purpose and may be terminated or reduced at any time without triggering pay retention provisions or adverse action procedures.

§ 9701.363 Special staffing payments.

DHS may establish additional payments for employees serving in positions for which DHS is experiencing or anticipates significant recruitment or retention problems. DHS may determine the amount of the payments and the conditions for eligibility, including any performance or service agreement requirements. Payments may be made at the same time as basic pay or in periodic lump-sum payments. Special staffing payments are not basic pay for any purpose and may be terminated or reduced at any time without triggering pay retention or adverse action procedures.

Transitional Provisions

§ 9701.371 General.

Sections 9701.371 through 9701.375 describe the transitional provisions that apply when DHS employees are converted to a pay system established under this subpart. An affected employee may convert from the GS system, a prevailing rate system, the SL/ST system, or the SES system, as provided in § 9701.302. DHS may prescribe policies and procedures as necessary to implement these transitional provisions. For the purpose of this section and §§ 9701.372 through 9701.375, the terms "*convert*" or "*conversion*" refer to employees who become covered by the pay system without a change in position (as a result of a coverage determination made under § 9701.102(a)(2)) and excludes employees who are reassigned or transferred from a noncovered position to a position already covered by the DHS system.

§ 9701.372 Creating initial pay ranges.

(a) DHS must set the initial band rate ranges for the DHS pay system established under this subpart in coordination with OPM. The initial ranges may link to the ranges that apply to converted employees in their previously applicable pay system (taking into account any applicable special rates and locality payments or supplements).

(b) For employees who are law enforcement officers as defined in 5 U.S.C. 5541(3) and who were covered by the GS system immediately before conversion, the initial ranges must provide rates of basic pay that equal or exceed the rates of basic pay these officers received under the GS system (taking into account any applicable special rates and locality payments or supplements).

§ 9701.373 Conversion of employees to the DHS pay system.

(a) When a pay system is established under this subpart and applied to a category of employees, DHS must convert employees to the system without a reduction in the employee's rate of basic pay (taking into account any applicable special rate or locality payment or supplement).

(b) If an employee receiving a special rate under 5 U.S.C. 5305 before conversion is converted to an equal rate of pay under the DHS pay system that consists of a basic rate and a locality or special pay supplement, the conversion is not considered an adverse action under subpart F of this part even if the supplement is not normally treated as basic pay for adverse action purposes.

(c) If another personnel action (*e.g.*, promotion, geographic movement) takes effect on the same day as the effective date of an employee's conversion to the new pay system, DHS must process the other action under the rules pertaining to the employee's former system before processing the conversion action.

(d) An employee on a temporary promotion at the time of conversion must be returned to his or her official position of record prior to processing the conversion. If the employee is temporarily promoted immediately after the conversion, pay must be set under the rules for promotion increases under the DHS system.

(e) The Secretary has discretion to make one-time pay adjustments for GS and prevailing rate employees when they are converted to the DHS pay system. DHS may prescribe rules governing any such pay adjustment, including rules governing employee eligibility, pay computations, and the timing of any such pay adjustment.

(f) DHS must convert entry/developmental employees in noncompetitive career ladder paths to the pay progression plan established for the Entry/Developmental band to which the employee is assigned under the DHS pay system.

§ 9701.374 Special transition rules for Federal Air Marshal Service.

Notwithstanding any other provision in this subpart, if DHS transfers Federal Air Marshal Service positions from the Transportation Security Administration (TSA) to another organization within DHS, DHS may cover those positions under a pay system that is parallel to the pay system that was applicable to the Federal Air Marshal Service within TSA. DHS may modify that system after coordination with OPM. DHS may prescribe rules for converting Federal Air Marshal Service employees to any new pay system that may subsequently be established under this subpart, consistent with the conversion rules in § 9701.373.

Subpart D—Performance Management

§ 9701.401 Purpose.

(a) This subpart provides for the establishment in the Department of Homeland Security of at least one performance management system as authorized by 5 U.S.C. chapter 97.

(b) DHS' performance management system(s) must—

(1) Be fair, credible, and transparent;

(2) Be designed, implemented, and administered to support the accomplishment of the Departmental and organizational mission and goals;

(3) Promote and sustain a high-performance culture; and

(4) Enable DHS to set mission-sensitive performance expectations, make meaningful distinctions among employees based on performance, address poor performance, and foster and reward excellent performance.

§ 9701.402 Coverage.

(a) DHS employees who would otherwise be covered by 5 U.S.C. chapter 43 are eligible for coverage under this subpart, subject to approval by the Secretary or designee under § 9701.102(a)(2), except as provided in paragraph (b) of this section. Those eligible for coverage include employees who were excluded from chapter 43 by OPM under 5 CFR 430.202(d) prior to the effective date of this subpart, as determined under § 9701.102(a)(2).

(b) Employees who are not expected to be employed longer than a minimum period (as defined in § 9701.404) during a consecutive 12-month period are excluded from coverage under this subpart.

§ 9701.403 Waivers.

With respect to employees covered by this subpart, 5 U.S.C. chapter 43 and 5 CFR part 430 are waived.

§ 9701.404 Definitions.

In this subpart—

Appraisal means the review and evaluation of an employee's performance.

Appraisal period means the period of time established under a performance management system for reviewing employee performance.

Competencies means the measurable or observable knowledge, skills, abilities, attributes, or behaviors required by the position.

Contribution means a work product, service, output, or result provided or produced by an employee that supports the Departmental or organizational mission, goals, or objectives.

Minimum period means period of time established by DHS during which an employee must perform before receiving a rating of record.

Performance means accomplishment of work assignments or responsibilities.

Performance management means applying the integrated processes of setting and communicating performance expectations, monitoring performance and providing feedback, and developing, rating, and rewarding employee performance to support the success of the organization and its employees in attaining goals and objectives.

Performance management system means the policies and requirements established under this subpart, as supplemented by internal DHS implementing regulations, for setting and communicating employee performance expectations, monitoring performance and providing feedback, and developing, rating, and rewarding employee performance.

Performance measures means observable or verifiable descriptions of quality, quantity, timeliness, cost-effectiveness, or manner of performance (including observable behaviors and attributes).

Rating of record means a performance appraisal prepared—

(1) At the end of an appraisal period covering an employee's performance of assigned duties over the applicable period; or

(2) To support a pay determination, including one granted in accordance with subpart C of this part, a within-grade increase granted under 5 CFR 531.404, or a pay determination granted under other applicable rules.

Unacceptable performance means the failure to meet one or more performance expectations.

§ 9701.405 Performance management systems.

(a) DHS may issue internal implementing regulations that establish one or more performance management systems for DHS employees, subject to the requirements set forth in this subpart.

(b) At a minimum, a DHS performance management system or systems must—

(1) Comply with the provisions of 5 U.S.C. chapter 23 that set forth the merit system principles and prohibited personnel practices;

(2) Support and otherwise comport with the Government Performance and Results Act of 1993 (GPRA), and Departmental and organizational

strategic goals and objectives and annual performance plans;

(3) Identify the employees covered and provide a means for their involvement in the design and implementation of the system(s);

(4) In design and application, be fair, credible, and transparent;

(5) Align individual performance expectations with the Departmental or organizational mission, strategic goals, GPRA annual performance plans, or other DHS or organizational objectives and measures;

(6) Promote individual accountability by clearly communicating performance expectations and holding employees responsible for accomplishing them and by holding supervisors and managers responsible for effectively managing the performance of employees under their supervision;

(7) Provide for meaningful distinctions in performance to support adjustments in pay, awards, promotions, and performance-based adverse actions;

(8) Specify—

(i) The employees covered by the system(s);

(ii) The minimum period during which an employee must perform before receiving a rating of record;

(iii) Procedures for setting and communicating performance expectations, monitoring performance and providing feedback, and developing, rating, and rewarding performance; and

(iv) Criteria and procedures to address the performance of employees who are detailed or transferred and for employees in other special circumstances.

§ 9701.406 Setting and communicating performance expectations.

(a) Supervisors and managers must establish performance expectations and communicate them to employees.

(b) Performance expectations must align with and support the DHS mission and its strategic goals, organizational program and policy objectives, annual performance plans, and other measures of performance.

(c) Performance expectations may take the form of—

(1) Goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level;

(2) Organizational, occupational, or other work requirements, such as standard operating procedures, administrative manuals, internal rules and regulations, and/or other instructions that are generally applicable and available to the employee;

(3) A particular work assignment, including expectations regarding the quality, quantity, accuracy, timeliness, and/or other expected characteristics of the completed assignment;

(4) Competencies an employee is expected to demonstrate on the job, and/or the contributions an employee is expected to make; or

(5) Any other means, as long as it is reasonable to assume that the employee will understand the performance that is expected.

(d) Employees must seek clarification and/or additional information when they do not understand their performance expectations.

(e) Supervisors must involve employees, insofar as practicable, in the development of their performance expectations. However, final decisions regarding performance expectations are within the sole and exclusive discretion of the supervisor.

§ 9701.407 Monitoring performance.

In applying the requirements of the performance management system and its internal implementing regulations, supervisors must—

(a) Monitor the performance of their employees and the organization; and

(b) Provide periodic feedback to employees on their actual performance as compared to their performance expectations, including one or more formal interim performance reviews during each appraisal period.

§ 9701.408 Developing performance.

(a) Subject to budgetary and organizational constraints, a supervisor must—

(1) Provide employees with the proper tools and technology to do the job; and

(2) Facilitate employee development to enhance employees' ability to perform.

(b) During the appraisal period, if a supervisor determines that an employee's performance is unacceptable, the supervisor must—

(1) Consider the range of options available to address the performance deficiency, such as remedial training, an improvement period, a reassignment, a verbal warning, letters of counseling, written reprimands, and/or an adverse action (as defined in subpart F of this part); and

(2) Take appropriate action to address the deficiency, taking into account the circumstances, including the nature and gravity of the unacceptable performance and its consequences.

(c) As specified in subpart G of this part, employees may appeal adverse actions based on unacceptable performance.

§ 9701.409 Rating performance.

(a)(1) Except as provided in paragraph (a)(2) of this section, the DHS performance management system(s) must establish a single rating level of unacceptable performance, a rating level of fully successful performance (or equivalent), and at least one rating level above fully successful performance.

(2) For employees at the entry/developmental level, the DHS performance management system(s) may establish two rating levels, *i.e.*, an unacceptable rating level and a rating level of fully successful (or equivalent).

(b) A supervisor or other rating official must prepare and issue a rating of record after the completion of the appraisal period. An additional rating of record may be issued to support—

(1) A performance pay increase determination under § 9701.342(a);

(2) A within-grade increase determination under 5 CFR 531.404; or

(3) A pay determination under any other applicable pay rules.

(c) A rating of record must assess an employee's performance with respect to his or her performance expectations and/or relative contributions and is considered final when issued to the employee with all appropriate reviews and signatures.

(d) DHS may not impose a quota on any rating level or a mandatory distribution of ratings of record; *i.e.*, forced distributions are prohibited.

(e) A rating of record issued under this subpart is an official rating of record for the purpose of any provision of title 5, Code of Federal Regulations, for which an official rating of record is required.

(f) As provided in Executive Order 5396, DHS may not lower the rating of record of a disabled veteran based on absences from work to seek medical treatment.

(g) A rating of record may be grieved by a non-bargaining unit employee (or a bargaining unit employee when no negotiated procedure exists) through an administrative grievance procedure established by DHS. A bargaining unit employee may grieve a rating of record through a negotiated grievance procedure, as provided in subpart E of this part.

(h) A supervisor or other rating official may prepare an additional performance appraisal for the purposes specified in the applicable performance management system (*e.g.*, transfers and details) at any time after the completion of the minimum period. Such an appraisal is not a rating of record.

(i) The DHS performance management system(s) must establish policies and procedures for crediting performance in

a reduction in force, including policies for assigning additional retention credit based on performance. Such policies must comply with 5 U.S.C. chapter 35 and 5 CFR 351.504.

§ 9701.410 Rewarding performance.

(a) Ratings of record will be used to make decisions regarding—

(1) Performance pay increases under § 9701.342;

(2) Within-grade and quality step increases under 5 CFR 531.404 and 531.504; and

(3) Pay determinations under other applicable pay rules;

(b) Ratings of record may be used as a basis for issuing awards under any legal authority, including 5 U.S.C. chapter 45, 5 CFR part 451, and a Departmental or organizational awards program.

§ 9701.411 Performance Review Boards.

(a) DHS will establish Performance Review Boards (PRBs) to—

(1) Review ratings of record in order to promote consistency of application;

(2) Provide general oversight of the performance management system(s) to ensure administration in a fair, credible, and transparent manner; and

(3) At the PRB's sole and exclusive discretion and on a case-by-case basis, remand one or more individual ratings of record for additional review and/or, where circumstances warrant, modify a rating or ratings of record.

(b) DHS may establish PRBs for particular organizational units, occupations, and/or locations, or on such basis as it determines appropriate.

(c) DHS may appoint as many PRBs as it deems necessary to carry out their intended function effectively.

(d) When practicable, PRB members may include employees outside the organizational unit, occupation, and/or location of employees whose ratings of record are subject to review by that PRB.

§ 9701.412 DHS responsibilities.

In carrying out its responsibility to design, implement, and apply a performance management system that is fair, credible, and transparent, DHS must—

(a) Provide for training of supervisors, managers, and employees;

(b) Transfer ratings between subordinate organizations and to other Federal departments or agencies;

(c) Evaluate its performance management system(s) for effectiveness and compliance with this subpart, internal DHS regulations and policies, and the provisions of 5 U.S.C. chapter 23 that set forth the merit system principles and prohibited personnel practices; and

(d) Provide OPM with a copy of the Departmental regulations, policies, and procedures that implement these regulations.

Subpart E—Labor-Management Relations

§ 9701.501 Purpose.

This subpart contains the regulations implementing the provisions of 5 U.S.C. 9701(b) relating to the Department's labor-management relations system. The Department was created in recognition of the paramount interest in safeguarding the American people. For this reason Congress stressed that personnel systems established by the Department and OPM must be flexible and contemporary, enabling the Department to rapidly respond to threats to our Nation. The labor-management regulations in this subpart are designed to meet these compelling concerns and must be interpreted with the Department's mission foremost in mind. The regulations also recognize the rights of DHS employees described below to organize and bargain-collectively, subject to any exclusion from coverage or limitation on negotiability established by law, including these regulations.

§ 9701.502 Rule of construction.

This subpart must be interpreted in a way that recognizes the critical homeland security mission of the Department. Each provision of this subpart must be construed to promote the swift, flexible, effective day-to-day accomplishment of this mission, as defined by the Secretary or designee. The interpretation of these regulations by the Secretary or designee and the Director must be accorded great deference.

§ 9701.503 Waiver.

Except as incorporated with modifications into these regulations, the provisions of 5 U.S.C. 7101 through 7135 are waived.

§ 9701.504 Definitions.

In this his subpart:

Authority means the Federal Labor Relations Authority described in 5 U.S.C. 7104(a).

Board means the Homeland Security Labor Relations Board.

Collective bargaining means the performance of the mutual obligation of the management representative of the Department and the exclusive representative of employees in an appropriate unit in the Department to meet at reasonable times and to consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

Collective bargaining agreement means an agreement entered into as a result of collective bargaining pursuant to the provisions of this subpart.

Component means any organizational subdivision of the Department.

Conditions of employment means personnel policies, practices, and matters affecting working conditions—whether established by rule, regulation, or otherwise—except that such term does not include policies, practices, and matters relating to—

(1) Political activities prohibited under 5 U.S.C. chapter 73, subchapter III;

(2) The classification of any position, including any determinations regarding job evaluation under subpart B of this part;

(3) The pay of any position, including any determinations regarding pay or adjustments thereto under subpart C of this part; or

(4) Any matters specifically provided for by Federal statute, Executive order, Governmentwide or Departmental regulations, or the regulations in this part.

Confidential employee means an employee who acts in a confidential capacity with respect to an individual who has labor-management relations responsibilities.

Dues means dues, fees, and assessments.

Employee means an individual employed by the Department or whose employment in the Department has ceased because of any unfair labor practice under § 9701.517 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority, but does not include—

(1) An alien or noncitizen of the United States who occupies a position outside the United States;

(2) A member of the uniformed services;

(3) A supervisor or a management official; or

(4) Any person who participates in a strike in violation of 5 U.S.C. 7311.

Exclusive representative means any labor organization which—

(1) Is certified as the exclusive representative of employees in an appropriate unit consistent with the

Department's organizational structure, pursuant to 5 U.S.C. 7111; or

(2) Held recognition on March 1, 2003, as the exclusive representative of employees in an appropriate unit on the basis of an election, or on any basis other than an election, and continues to be so recognized in accordance with the provisions of the Homeland Security Act.

Grievance means any complaint concerning the effect or interpretation, or a claim of breach, of a collective bargaining agreement or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment—

(1) By any employee concerning any matter relating to the conditions of employment of the employee;

(2) By any labor organization concerning any matter relating to the conditions of employment of any employee; or

(3) By any employee, labor organization, or the Department; except that this definition does not apply with respect to any matters excluded from grievance procedures under § 9701.521.

Labor organization means an organization composed in whole or in part of Federal employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by an agency; or

(4) An organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

Management official means an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department or who has the authority to recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

Supervisor means an individual employed by the Department having authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

§ 9701.505 Coverage.

Subject to approval by the Secretary or designee under § 9701.102(a)(2), all Department employees are covered by these regulations unless otherwise excluded pursuant to 5 U.S.C. 7103(a) or (b), 7112(b) and (c), or any other legal authority.

§ 9701.506 Impact on existing agreements.

The provisions of this subpart take precedence over any inconsistent provision contained in a collective bargaining agreement covering Department employees. Any such inconsistent provision in a collective bargaining agreement is unenforceable.

§ 9701.507 Employee rights.

Each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee must be protected in the exercise of such right. Except as otherwise provided under this subpart, such right includes the right—

(a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

(b) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this subpart.

§ 9701.508 Homeland Security Labor Relations Board.

(a) The Homeland Security Labor Relations Board is composed of three members, each of whom is appointed for a term not to exceed 3 years, except as provided in paragraph (d)(2) of this section. Members may be removed by the appointing official only for inefficiency, neglect of duty, or malfeasance.

(b) The members of the Board are appointed by the Secretary. The Secretary will designate one of these members to serve as Chairman. Members will be chosen for their expertise in labor-management relations and their knowledge of the Department's mission.

(c) The Secretary will appoint one member of the FLRA to serve as a member of the Board. The Chair of the FLRA will recommend a Board member to the Secretary from among the existing members of the FLRA. This member may serve on the Board only as long as he or she is a member of the FLRA.

(d)(1) An individual chosen to fill a vacancy will be appointed for the unexpired term of the member who is replaced.

(2) The term of any member may be extended beyond 3 years when necessary to provide for an orderly transition.

(e) Any two members of the Board constitute a quorum. A vacancy in the Board may not impair the right of the remaining members to exercise all of the powers of the Board.

§ 9701.509 Powers and duties of the Board.

(a) The Board may, to the extent provided in this subpart and in accordance with regulations prescribed by the Board—

(1) Determine an appropriate unit consistent with the Department's organizational structure for labor organization representation under § 9701.514;

(2) Determine issues of individual bargaining unit eligibility under 5 U.S.C. 7112(b) and (c) and 6 U.S.C. 412(b)(2);

(3) Resolve issues relating to the scope of bargaining and the duty to bargain in good faith under § 9701.518 and conduct hearings and resolve complaints of unfair labor practices concerning—

(i) The duty to bargain in good faith; and

(ii) Strikes, work stoppages, slowdowns, and picketing, or condoning such activity by failing to take action to prevent or stop such activity.

(4) Resolve information request disputes;

(5) Resolve exceptions to arbitration awards;

(6) Resolve negotiation impasses in accordance with § 9701.519;

(7) Conduct de novo review of legal conclusions and the interpretation of collective bargaining agreements;

(8) Have discretion to evaluate the evidence presented in the record and reach its own independent conclusions with respect to the matters at issue; and

(9) Assert jurisdiction over any matter concerning Department employees that has been submitted to the FLRA if the Board determines that the matter affects homeland security.

(b) The Board may issue Department-wide advisory opinions with the force and effect of decisions on matters concerning—

(1) The appropriateness and composition of the Department's bargaining units;

(2) The labor-management relations obligations of both the Department and exclusive representatives, including the scope of bargaining, the duty to bargain, consultation, and the rights and duties of employees and exclusive representatives; and

(3) The administration of the use of official time by employee representatives.

(c) In issuing advisory opinions under paragraph (b) of this section, the Board may elect to consult with the Authority.

§ 9701.510 Powers and duties of the Federal Labor Relations Authority.

The Federal Labor Relations Authority may, to the extent provided in this subpart and in accordance with regulations prescribed by the Authority, make the following determinations with respect to the Department:

(a) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111 relating to the according of exclusive recognition to labor organizations; and

(b) Conduct hearings and resolve complaints of unfair labor practices under § 9701.517(a)(1) through (4) and (b)(1) through (4).

§ 9701.511 Management rights.

(a) Subject to paragraphs (b) and (c) of this section, nothing in this subpart may affect the authority of any management official or supervisor of the Department—

(1) To determine the mission, budget, organization, number of employees, and internal security practices of the agency;

(2) To hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which agency operations may be conducted; to determine the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; and to take whatever other actions may be essential to carry out the Department's mission; and

(3) To lay off and retain employees, or to suspend, remove, reduce in grade, band, or pay, or take other disciplinary action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion or from any other appropriate source.

(b) Management has no duty to bargain over the exercise of any authority under paragraph (a)(1) or (2) of this section. Management may elect, in its sole and exclusive discretion, to bargain over—

(1) Procedures that it will observe in exercising these authorities; and

(2) Appropriate arrangements for employees adversely affected by the exercise of these authorities.

(c) At the request of an exclusive representative, management will bargain over—

(1) Procedures which management officials and supervisors will observe in exercising any authority under paragraph (a)(3) of this section; and

(2) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(3) of this section.

§ 9701.512 Consultation.

(a) Before making any substantive change in conditions of employment through the exercise of a management right in § 9701.511(a)(1) or (2), management may request the exclusive representative to present its views and recommendations regarding the impact of the proposed change on bargaining unit employees.

(b) After exercising any authority under § 9701.511(a)(1) or (2), if management determines not to bargain with the exclusive representative, the exclusive representative may present its views and recommendations regarding the impact of the exercise of authority on bargaining unit employees. Management must consider those views and recommendations.

§ 9701.513 Exclusive recognition of labor organizations.

The Department must accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit consistent with the Department's organizational structure, as determined by the Board, who cast valid ballots in the election.

§ 9701.514 Determination of appropriate units for labor organization representation.

(a) In determining the appropriateness of any unit, the Board must determine in each case whether the proposed unit is an appropriate unit consistent with the Department's organizational structure. The Board must determine in each case whether the unit will be established on a Department, component, installation, functional, or other basis and will determine any unit to be an appropriate unit only if the determination will promote effective dealings with and efficiency of the operations of the Department. The Board may also consider whether the unit will ensure a clear and identifiable community of interest among the employees in the unit.

(b) A unit may not be determined to be an appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor may a unit be determined to be an appropriate if it includes—

(1) Except as provided under 5 U.S.C. 7135(a)(2), any management official or supervisor;

(2) A confidential employee;

(3) An employee engaged in personnel work in other than a purely clerical capacity;

(4) An employee engaged in administering the provisions of this subpart;

(5) An employee excluded from a unit under 6 U.S.C. 412(b)(2); or

(6) Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) Which represents other individuals to whom such a provision applies; or

(2) Which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units for which a labor organization is the exclusive representative may, upon petition by the Department or labor organization, be consolidated with or without an election into a single larger unit if the Board considers the larger unit to be an appropriate unit consistent with the Department's organizational structure. The Board must certify the labor

organization as the exclusive representative of the new larger unit.

§ 9701.515 Representation rights and duties.

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative must be given the opportunity to be represented at—

(i) Any examination of a bargaining unit employee by a representative of the Department other than its Office of Inspector General, Office of Security, or Office of Internal Affairs in connection with an investigation if—

(A) The employee reasonably believes that the examination may result in disciplinary action against the employee, and

(B) The employee requests such representation; and

(ii) Any discussion between one or more agency representatives and one or more bargaining unit employees concerning any grievance filed under the negotiated grievance procedure.

(3) Nothing in paragraph (a)(2) of this section provides a right for the exclusive representative to be represented at any discussion between one or more agency representatives and one or more bargaining unit employees involving an EEO complaint, unless the employee(s) specifically requests representation from the exclusive representative.

(4) The Department must annually inform its employees of their rights under paragraph (a)(2)(i) of this section.

(5) Employee representatives are subject to the same standards of conduct as any other employee, whether they are serving in their representative capacity or not.

(6) The Department or appropriate component(s) of the Department and any exclusive representative in any appropriate unit in the Department, through appropriate representatives, must meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. In addition, the Department or appropriate component(s) of the Department and the exclusive representative may determine appropriate techniques, consistent with the operational rules of the Board, to assist in any negotiation.

(7) The rights of an exclusive representative under this section may not be construed to preclude an employee from—

(i) Being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance or appeal action; or

(ii) Exercising grievance or appellate rights established by law, rule; or regulation, except in the case of grievance or appeal procedures negotiated under this subpart.

(b) The duty of the Department or appropriate component(s) of the Department and an exclusive representative to negotiate in good faith under paragraph (a) of this section includes the obligation—

(1) To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) To meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) In the case of the Department or appropriate component(s) of the Department, to furnish to the exclusive representative involved, or its authorized representative, upon request and to the extent not prohibited by law, existing reasonably available information, normally maintained by the Department or appropriate component(s) of the Department and demonstrated by the exclusive representative to be necessary in order to represent an employee in grievance or appeal proceedings, or the bargaining unit in negotiations. Disclosure of such information does not include the following:

(i) Disclosure prohibited by law or regulations, including, but not limited to, the regulations in this part, Governmentwide and Departmental rules and regulations, and Executive orders;

(ii) Disclosure of information if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information;

(iii) Internal agency guidance, counsel advice, or training for managers and supervisors relating to collective bargaining;

(iv) Any disclosures where an authorized agency official has determined that disclosure would compromise the Department's mission, security, or employee safety; and

(v) Home addresses, telephone numbers, email addresses, or any other information not related to an employee's work.

(5) If agreement is reached, to execute on the request of any party to the negotiation, a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between Department or appropriate component(s) of the Department and the exclusive representative is subject to approval by an authorized agency official.

(2) The authorized agency official must approve the agreement within 30 days after the date the agreement is executed if the agreement is in accordance with the provisions of these regulations and any other applicable law, rule, or regulation.

(3) If the authorized agency official does not approve or disapprove the agreement within the 30-day period specified in paragraph (c)(2) of this section, the agreement must take effect and is binding on the Department or component(s), as appropriate, and the exclusive representative, but only if consistent with law and the regulations in this part, Governmentwide and Departmental rules and regulations, and Executive orders.

(4) A local agreement subject to a national or other controlling agreement at a higher level may be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the Department.

(5) Provisions in existing collective bargaining agreements are unenforceable if an authorized agency official determines that they are contrary to law and the regulations in this part, Governmentwide and Departmental rules and regulations, and Executive orders.

§ 9701.516 Allotments to representatives.

(a) If the Department has received from an employee in an appropriate unit a written assignment which authorizes the Department to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the Department must honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment must be made at no cost to the exclusive representative or the employee. Except as provided under paragraph (b) of this section, any such

assignment may not be revoked for a period of 1 year.

(b) An allotment under paragraph (a) of this section for the deduction of dues with respect to any employee terminates when—

(1) The agreement between the Department or Department component and the exclusive representative involved ceases to be applicable to the employee; or

(2) The employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (c)(2) of this section, if a petition has been filed with the Board by a labor organization alleging that 10 percent of the employees in an appropriate unit in the Department have membership in the labor organization, the Board must investigate the petition to determine its validity. Upon certification by the Board of the validity of the petition, the Department has a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(i) The provisions of paragraph (c)(1) of this section do not apply in the case of any appropriate unit for which there is an exclusive representative.

(ii) Any agreement under paragraph (c)(1) of this section between a labor organization and the Department or Department component with respect to an appropriate unit becomes null and void upon the certification of an exclusive representative of the unit.

§ 9701.517 Unfair labor practices.

(a) For the purpose of this subpart, it is an unfair labor practice for the Department—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) To sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities on an impartial basis to other labor organizations having equivalent status;

(4) To discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information or testimony under this subpart;

(5) To refuse, as determined by the Board, to consult or negotiate in good faith with a labor organization, as required by this subpart;

(6) To fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions, as required by this subpart; or

(7) To fail or refuse otherwise to comply with any provision of this subpart.

(b) For the purpose of this subpart, it is an unfair labor practice for a labor organization—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this subpart;

(3) To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) To discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) To refuse, as determined by the Board, to consult or negotiate in good faith with the Department as required by this subpart;

(6) To fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions as required by this subpart;

(7)(i) To call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations; or

(ii) To condone any activity described in paragraph (b)(7)(i) of this section by failing to take action to prevent or stop such activity; or

(8) To otherwise fail or refuse to comply with any provision of this subpart.

(c) Notwithstanding paragraph (b)(7) of this section, informational picketing which does not interfere with the Department's operations will not be considered an unfair labor practice.

(d) For the purpose of this subpart, it is an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by the labor organization, except for failure to meet reasonable occupational standards uniformly required for admission or to tender dues uniformly required as a condition of acquiring and retaining membership. This does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this subpart.

(e) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Where an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(f) The expression of any personal view, argument, opinion, or the making of any statement which publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election, corrects the record with respect to any false or misleading statement made by any person, or informs employees of the Government's policy relating to labor-management relations and representation, may not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions—

(1) Constitute an unfair labor practice under any provision of this subpart; or

(2) Constitute grounds for the setting aside of any election conducted under any provision of this subpart.

§ 9701.518 Duty to bargain in good faith.

(a)(1) Subject to paragraph (a)(2) of this section, there is no duty to bargain over any matters that are inconsistent with law or the regulations in this part, Governmentwide and Departmental rules and regulations, and Executive orders.

(2)(i) There is no duty to bargain when management exercises any of the authorities under § 9701.511(a)(1) and (2). Management may elect, in its sole and exclusive discretion, to bargain over procedures that it will observe in exercising these authorities and over appropriate arrangements for employees adversely affected by the exercise of these authorities.

(ii) At the request of an exclusive representative, management will bargain over—

(A) Procedures it will observe in exercising any authority under § 9701.511(a)(3); and

(B) Appropriate arrangements for employees adversely affected by the exercise of any authority under § 9701.511(a)(3).

(3) There is no duty to bargain changes in conditions of employment due to the exercise of any authority under § 9701.511 when such actions do not significantly affect a substantial portion of the bargaining unit.

(4) There is no duty to bargain on proposals that—

(i) Concern matters covered by an existing negotiated agreement; or

(ii) Do not significantly affect a substantial portion of the bargaining unit.

(5) If bargaining over an initial collective bargaining agreement or any successor agreement is not completed within 60 days after such bargaining begins, the parties can mutually agree to continue bargaining or either party can refer the matter to the Board for resolution.

(6) If the parties bargain during the term of an existing collective bargaining agreement over a proposed change in conditions of employment and no agreement is reached within 30 days after such bargaining begins, management may implement the proposed change after notifying the union.

(b) Except in any case to which paragraph (a)(2)(i) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Board in accordance with provisions established by the Board.

§ 9701.519 Negotiation impasses.

(a) If the Department and exclusive representative are unable to reach an agreement under § 9701.515, either party may submit the disputed issues to the Board for resolution.

(b) The Board will publish procedures that will govern the resolution of negotiation impasses under this subpart.

(c) If the parties do not arrive at a settlement after assistance by the Board, the Board may take whatever action is necessary and not inconsistent with this subpart to resolve the impasse.

(d) Notice of any final action of the Board under this section must be promptly served upon the parties. The action will be binding on such parties during the term of the agreement, unless the parties agree otherwise.

§ 9701.520 Standards of conduct for labor organizations.

Standards of conduct for labor organizations are those prescribed under 5 U.S.C. 7120.

§ 9701.521 Grievance procedures.

(a)(1) Except as provided in paragraph (a)(2) of this section, any collective bargaining agreement must provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in paragraphs (d), (f), and (g) of this section, the procedures must be the exclusive administrative procedures for grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in paragraph (a) of this section must be fair and simple, provide for expeditious processing, and include procedures that—

(i) Assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) Assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) Provide that any grievance not satisfactorily settled under the negotiated grievance procedure is subject to binding arbitration, which may be invoked by either the exclusive representative or the Department.

(2) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (b)(1)(iii) of this section must allow the arbitrator to order the Department to take any disciplinary action identified under 5 U.S.C. 1215(a)(3) that is otherwise within the authority of the Department to take.

(3) Any employee who is the subject of any disciplinary action ordered under paragraph (b)(2) of this section may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding paragraphs of this section do not apply with respect to any grievance concerning—

(1) Any claimed violation of 5 U.S.C. chapter 73, subchapter III (relating to prohibited political activities);

(2) Retirement, life insurance, or health insurance;

(3) A suspension or removal under § 9701.609;

(4) Any examination, certification, or appointment; and

(5) The classification of any position which does not result in the reduction in grade or pay of an employee.

(d) To the extent not already excluded by existing collective bargaining agreements, the exclusions contained in paragraph (c) of this section apply upon the effective date of this subpart, as determined under § 9701.102(a)(2).

(e)(1) An aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. 2302(b)(1) which also falls under the coverage of the negotiated grievance procedure may raise the matter under the applicable statutory procedures, or the negotiated procedure, but not both.

(2) An employee is deemed to have exercised his or her option under paragraph (e)(1) of this section to raise the matter under the applicable statutory procedures, or the negotiated procedure, at such time as the employee timely initiates an action under the applicable statutory or regulatory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(f) Matters covered under subpart G of this part may be raised only under the appellate procedures in subpart G of this part.

(g) An employee may grieve a performance rating of record that has not been raised in connection with an action appealable under subpart G of this part. Once an employee raises a performance rating issue in an appeal under subpart G of this part, any pending grievance or arbitration will be dismissed with prejudice. The arbitrator shall sustain the rating of record unless the grievant proves that it was arbitrary or capricious.

(h)(1) This paragraph applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which paragraph (e) of this section applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (h)(1) of this section may elect not more than one of the procedures described in paragraph (h)(3) of this section with respect thereto. A determination as to whether a particular procedure for seeking a remedy has been elected must be made as set forth under paragraph (h)(4) of this section.

(3) The procedures for seeking remedies described in this paragraph are as follows:

(i) An appeal under subpart G of this part;

(ii) A negotiated grievance under this section; and

(iii) Corrective action under 5 U.S.C. chapter 12, subchapters II and III.

(4) For the purpose of this paragraph, an employee is considered to have elected—

(i) The procedure described in paragraph (h)(3)(i) of this section if such employee has timely filed a notice of appeal under the applicable appellate procedures;

(ii) The procedure described in paragraph (h)(3)(ii) of this section if such employee has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(iii) The procedure described in paragraph (h)(3)(iii) of this section if such employee has sought corrective action from the Office of Special Counsel by making an allegation under 5 U.S.C. 1214(a)(1).

§ 9701.522 Exceptions to arbitration awards.

(a) Either party to arbitration under this subpart may file with the Board an exception to any arbitrator's award. The Board may take such action and make such recommendations concerning the award as is consistent with this subpart.

(b) If no exception to an arbitrator's award is filed under paragraph (a) of this section during the 30-day period beginning on the date of such award, the award is final and binding. Either party must take the actions required by an arbitrator's final award. The award may include the payment of back pay (as provided under 5 U.S.C. 5596 and 5 CFR part 550, subpart H).

§ 9701.523 Official time.

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this subpart must be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this section may not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, must be performed during the time the employee is in a nonduty status.

(c) Except as provided in paragraph (a) of this section, the Authority or the Board, as appropriate, will determine whether an employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority or the Board will be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(d) Except as provided in the preceding paragraphs of this section, any employee representing an exclusive representative or, in connection with any other matter covered by this subpart, any employee in an appropriate unit represented by an exclusive representative, must be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

§ 9701.524 Compilation and publication of data.

(a) The Board must maintain a file of its proceedings and copies of all available agreements and arbitration decisions and publish the texts of its impasse resolution decisions and the actions taken under § 9701.918.

(b) All files maintained under paragraph (a) of this section must be open to inspection and reproduction in accordance with 5 U.S.C. 552 and 552a. The Board will establish rules in consultation with the Department for maintaining and making available for inspection sensitive information.

§ 9701.525 Regulations of the Board.

The Board may prescribe procedural rules and regulations to carry out the provisions of this subpart.

§ 9701.526 Continuation of existing laws, recognitions, agreements, and procedures.

(a) Nothing contained in this subpart precludes the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or an agreement that is otherwise consistent with law and the regulations in this part between an agency and an exclusive representative of its employees, which is entered into before the effective date of this subpart, as determined under § 9701.102(a)(2).

(b) Policies, regulations, and procedures established under, and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838 or any other Executive order, as in effect on the effective date of this subpart (as determined under § 9701.102(a)(2)), will remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this subpart or by regulations or decisions issued pursuant to this subpart.

§ 9701.527 Savings provision.

This subpart does not apply to grievances or other administrative proceedings already pending on the effective date of this subpart, as determined under § 9701.102(a)(2).

Subpart F—Adverse Actions

General

§ 9701.601 Purpose.

This subpart contains regulations prescribing the requirements for employees who are suspended, demoted, reduced in pay, removed, or furloughed for 90 days or less.

§ 9701.602 Waivers.

This subpart waives 5 U.S.C. 7501 through 7514 and 7531 through 7533. This subpart retains 5 U.S.C. 7521 and 7541 through 7543.

§ 9701.603 Definitions.

In this subpart:

Band has the meaning given that term in § 9701.204.

Day means a calendar day.

Demotion means a reduction in grade, a reduction to a lower band within the same occupational cluster, or a reduction to a lower band in a different occupational cluster under rules prescribed by DHS pursuant to § 9701.355.

Furlough means the placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Grade means a level of work under a position classification or job grading system.

Indefinite suspension means the placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Department action. An indefinite suspension continues for an indeterminate period of time and ends with either the employee returning to duty or the completion of any subsequent administrative action.

Initial service period means the 1 to 2 years employees must serve upon appointment to DHS (on or after the effective date of this subpart, as determined under § 9701.102(a)(2)) before obtaining coverage under the adverse action protections of this subpart. Prior Federal service counts toward this requirement.

Pay means the rate of basic pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind. For the purpose of this subpart, pay does not include locality-based comparability payments under 5

U.S.C. 5304, locality or special pay supplements under subpart C of this part, or other similar payments.

Removal means the involuntary separation of an employee from the Department.

Suspension means the placement of an employee, for disciplinary reasons, in a temporary status without duties and pay.

§ 9701.604 Coverage.

(a) *Actions covered.* This subpart covers suspensions, demotions, reductions in pay (including reductions in pay within a band), removals, and furloughs of 90 days or less.

(b) *Actions excluded.* This subpart does not cover—

(1) Any adverse action taken against an employee during an initial service period, except as provided under paragraph (d)(2) of this section. The removal of employees in the competitive service who are in an initial service period must be in accordance with 5 CFR 315.804 and 315.805;

(2) The demotion of a supervisor or manager under 5 U.S.C. 3321;

(3) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent band and pay, if the agency informed the employee that it was to be of limited duration;

(4) A reduction-in-force action under 5 U.S.C. 3502;

(5) An action imposed by the Merit Systems Protection Board under 5 U.S.C. 1204;

(6) An action against an administrative law judge under 5 U.S.C. 7521;

(7) A voluntary action by an employee;

(8) An action taken or directed by the OPM based on suitability under 5 CFR part 731.

(9) Termination of appointment on or before the expiration date specified as a basic condition of employment at the time the appointment was made;

(10) Cancellation of a promotion to a position not classified prior to the promotion;

(11) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(12) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation;

(13) An action taken under a provision of statute, other than one codified in title 5, United States Code, which excludes the action from 5 U.S.C. chapter 75 or this subpart; and

(14) An action which has been effected before the date on which the employee is covered under this subpart.

(c) *Employees covered.* Subject to approval by the Secretary or designee under § 9701.102(a)(2), this subpart covers DHS employees, except as excluded by paragraph (d) of this section.

(d) *Employees excluded.* This subpart does not cover—

(1) Employees who are serving a term, temporary, or otherwise time limited appointment;

(2) Non-preference employees who are serving in an initial service period and preference eligible employees who are serving the first year of an initial service period. Preference eligible employees who have completed the first year of an initial service period are covered by subpart F. Employees in the competitive service who are removed during an initial service period shall be removed in accordance with 5 CFR 315.804 and 315.805;

(3) Employees who are in the Senior Executive Service;

(4) Administrative law judges;

(5) Employees who are terminated in accordance with terms specified as conditions of employment at the time the appointment was made;

(6) Employees whose appointments are made by and with the advice and consent of the Senate;

(7) Employees whose positions have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by—

(i) The President for a position that the President has excepted from the competitive service;

(ii) OPM for a position that OPM has excepted from the competitive service; or

(iii) An authorized agency official for a position excepted from the competitive service by statute;

(8) An employee whose appointment is made by the President;

(9) An employee who is receiving an annuity from the Civil Service Retirement and Disability Fund or the Foreign Service Retirement and Disability Fund based on the service of such employee;

(10) An employee who is described in 5 U.S.C. 5102(c)(11) as an alien or non-citizen occupying a position outside the United States; and

(11) Employees affected by actions taken or imposed under any statute or regulation other than this subpart.

Requirements for Suspension, Demotion, Reduction in Pay, Removal, or Furlough of 90 Days or Less

§ 9701.605 Standard for action.

The Department may take an adverse action under this subpart only when it establishes a factual basis for the action and a connection between the action and a legitimate Departmental interest.

§ 9701.606 Mandatory removal offenses.

(a) The Secretary in his or her unreviewable discretion will identify offenses that have a direct and substantial impact on the ability of the Department to protect homeland security. Such offenses will be identified in advance as part of the Department's internal implementing regulations and made known to all employees.

(b) An employee who commits a mandatory removal offense must be removed from Federal service. The Secretary, however, has the sole and exclusive discretion to mitigate that penalty. Employees alleged to have committed these offenses will have the right to advance notice, an opportunity to respond, a written decision, a review by an adjudicating official, and a further appeal to an independent DHS panel, as set forth in subpart G of this part.

(c) Nothing in this section limits the discretion of the Department or any component thereof to remove employees for offenses other than those identified by the Secretary as a mandatory removal offense.

§ 9701.607 Procedures.

An employee against whom an action is proposed is entitled to the following:

(a) *Proposal notice.* (1) *Notice period.* The Department must provide at least 15 days advance written notice of the proposed adverse action unless a mandatory removal offense is involved, or when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. In such cases the Department must provide at least 5 days advance written notice.

(2) *Duty status during notice period.* An employee will remain in a duty status in his or her regular position during the notice period. However, when the Department determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Department may elect one or a combination of the following alternatives:

(i) Assign the employee to duties where the Department determines the employee is no longer a threat to safety, the Department's mission, or to Government property;

(ii) Allow the employee to take leave, or carry him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave; and/or

(iii) Place the employee in a paid, non-duty status for such time as is necessary to effect the action.

(3) *Contents of notice.* (i) The proposal notice must inform the employee of the factual basis for the proposed action in sufficient detail to permit the employee to reply to the notice, and inform the employee of his or her right to review the Department's evidence supporting the proposed action. The Department may not use evidence that cannot be disclosed to the employee, his or her representative, or designated physician pursuant to 5 CFR 297.204.

(ii) When some but not all employees in a given competitive level are being furloughed, the proposal notice must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough. The notice is not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(b) *Opportunity to reply.* (1) The Department must give employees no less than 5 days, which must run concurrently with the notice period, to reply orally and/or in writing.

(2) During the opportunity to reply, the Department must give the employee a reasonable amount of official time to review the Department's supporting evidence, and to furnish affidavits and other documentary evidence, if the employee is otherwise in an active duty status.

(3) The Department must designate an official to receive the employee's written and/or oral response who has authority to make or recommend a final decision on the proposed adverse action. The opportunity to reply orally in person does not include the right to a formal hearing with examination of witnesses.

(4) The employee may be represented by an attorney or other representative of the employee's choice and at the employee's expense. The Department may disallow an employee's choice of representative when—

(i) An individual serving as a representative would cause a conflict of interest or position or compromise security; or

(ii) An employee whose release from his or her official position would result in unreasonable costs to the Government, or whose priority work assignment prevents a release from official duties.

(5) An employee who wishes the Department to consider any medical condition that may be relevant to the proposed adverse action must provide medical documentation, as that term is defined at 5 CFR 339.104, during the opportunity to reply.

(i) *Department responsibilities.* When considering an employee's medical condition, the Department is not required to withdraw or delay a proposed adverse action. However, the Department must—

(A) Allow the employee to provide medical documentation during the opportunity to reply;

(B) Comply with 29 CFR 1614.203(b) and relevant Equal Employment Opportunity Commission rules; and

(C) Comply with 5 CFR 831.1205 when issuing a decision to remove.

(ii) *Medical examinations.* When considering an employee's medical documentation, the Department may require or offer a medical examination pursuant to 5 CFR part 339, subpart C.

(c) *Decision notice.* (1) In arriving at its decision, the Department may not consider any reasons for the action other than those specified in the proposal notice. The Department must consider any response from the employee and employee's representative, if the employee provides the response during the opportunity to reply.

(2) The decision notice must specify in writing the reasons for the decision and advise the employee of any appeal or grievance rights, under subpart G of this part. The Department must deliver the notice to the employee on or before the effective date of the action.

§ 9701.608 Departmental record.

(a) *Document retention.* The Department must keep a record of all relevant documentation concerning the action for a period of time pursuant to the General Records Schedule and the Guide to Processing Personnel Actions. The record must include the following:

(1) A copy of the proposal notice;

(2) The employee's written response, if any, to the proposal;

(3) A summary of the employee's oral response;

(4) A copy of the decision notice; and

(5) Any supporting material that is directly relevant and on which the action was substantially based.

(b) *Access to the record.* The Department must make the record available for review by the employee and furnish a copy of the record upon the employee's request or the request of the Merit Systems Protection Board or the DHS Panel.

National Security

§ 9701.609 Suspension and removal.

(a) Notwithstanding other provisions of law or regulation, the Secretary may suspend an employee without pay when she or he considers suspension in the interests of national security. To the extent that the Secretary determines that the interests of national security permit, the suspended employee must be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the Secretary statements or affidavits to show why he or she should be restored to duty.

(b) Subject to paragraph (c) of this section, the Secretary may remove an employee suspended under this section when, after investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary or advisable in the interests of national security. The determination of the Secretary is final.

(c) An employee suspended under this section who has a permanent or indefinite appointment, has completed an initial service period, and is a citizen of the United States is entitled, after suspension and before removal, to—

(1) A written notice that informs the employee of the factual basis for the proposed action in sufficient detail, as security considerations permit, to permit the employee to respond to the notice within 30 days after suspension, which may be amended within 30 days thereafter;

(2) An opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to respond to the proposed adverse action and submit affidavits;

(3) A hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(4) A review of his or her case by the Secretary, before a decision adverse to the employee is made final; and

(5) A written decision from the Secretary.

Subpart G—Appeals

§ 9701.701 Purpose.

This subpart contains the regulations implementing the provisions of 5 U.S.C. 9701(a) through (c) and (f) concerning the Department's appeals system for

certain adverse actions covered under subpart F of this part. These provisions require that the new appeal regulations provide Department employees fair treatment, are consistent with the protections of due process and, to the maximum extent practicable, provide for the expeditious handling of appeals. The Homeland Security Act also specifies that modifications to 5 U.S.C. chapter 77 should further the fair, efficient, and expeditious resolution of appeals.

§ 9701.702 Waivers.

The provisions of 5 U.S.C. 7701 are waived insofar as the appealable adverse actions covered under subpart F of this part are concerned. The provisions of 5 U.S.C. 7702 are modified as provided in § 9701.708. The appellate procedures specified herein supersede those of MSPB to the extent they are inconsistent with MSPB's regulations. MSPB must follow these regulations until conforming regulations are issued by MSPB.

§ 9701.703 Definitions.

In this subpart:

Adjudicating official means an administrative law judge, administrative judge, or other employee designated by MSPB or the Panel to decide an appeal.

Day means calendar day.

Harmful error means error by the Department in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is on the appellant to show that the error was harmful, *i.e.*, that it caused substantial harm or prejudice to his or her rights.

Mandatory removal offense means an offense that the Secretary determines in his or her sole and unreviewable discretion has a direct and substantial impact on the ability of the Department to protect homeland security.

MSPB means the Merit Systems Protection Board.

Panel means the three-person panel composed of officials appointed by the Secretary to decide appeals of an adjudicating official's decision on an action taken based on a mandatory removal offense.

Petition for review means a request for review of an initial decision of an adjudicating official.

Preponderance of the evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

Substantial evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree.

§ 9701.704 Coverage.

(a) Subject to approval by the Secretary or designee under § 9701.102(a)(2), this subpart applies to employees who appeal demotions, reductions in pay, suspensions of 15 days or more, removals, or furloughs of 90 days or less, provided such employees are—

(1) Covered by § 9701.604; or

(2) Employed by the Transportation Security Administration and would be covered by § 9701.604 but for the exclusion in § 9701.604(d)(11).

(b) Appeals of suspensions shorter than 15 days and other lesser disciplinary measures are not covered under this subpart but may be grieved through a negotiated grievance procedure or agency administrative grievance procedure, whichever is applicable.

(c) The removal of an employee while serving an initial service period is subject to the provisions of 5 CFR 315.806 to the extent the employee is in the competitive service. Such provisions are applicable for the first year of an initial service period.

§ 9701.705 Alternative dispute resolution.

The Department and OPM recognize the value of using alternative dispute resolution methods such as mediation, an ombudsman, or interest-based negotiation to address employee-employer disputes arising in the workplace, including those which may involve disciplinary actions. Such methods can result in more efficient and more effective outcomes than traditional, adversarial methods of dispute resolution. The Department will use alternative dispute resolution methods where appropriate.

§ 9701.706 MSPB appellate procedures.

(a) A covered Department employee may appeal an adverse action identified under § 9701.704(a) to MSPB. Such an employee has a right to be represented by an attorney or other representative. However, separate procedures apply when the action is taken because of a mandatory removal offense or is in the interest of national security. (*See* §§ 9701.707 and 9701.609 respectively.)

(b) MSPB may decide any case appealed to it or may refer the case to an administrative law judge appointed under 5 U.S.C. 3105 or other employee of MSPB designated by MSPB to decide such cases. MSPB or an adjudicating official must make a decision at the close of the review and provide a copy of the decision to each party to the appeal and to OPM.

(c)(1) If an employee is the prevailing party in an appeal under this section, the employee must be granted the relief provided in the decision upon issuance of the decision, and such relief remains in effect pending the outcome of any petition for review unless—

(i) MSPB or an adjudicating official determines that the granting of such relief is not appropriate; or

(ii) The relief granted in the decision provides that the employee will return or be present at the place of employment pending the outcome of any petition for review and the Department, subject to paragraph (c)(2) of this section, determines in its sole and unreviewable discretion, that the return or presence of the employee is unduly disruptive to the work environment.

(2) If the Department makes a determination under paragraph (c)(1)(ii) of this section that prevents the return or presence of an employee at the place of employment, such employee must receive pay, compensation, and all other benefits as terms and conditions of employment pending the outcome of any petition for review.

(3) Nothing in the provisions of this section may be construed to require any award of back pay or attorney fees be paid before MSPB's decision is final.

(d)(1) The decision of the Department must be sustained under paragraph (b) of this section if it is supported by substantial evidence, unless the employee shows by a preponderance of the evidence—

(i) Harmful error in the application of Department procedures in arriving at the decision;

(ii) That the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(iii) That the decision was not in accordance with law.

(2) The Board or adjudicating official may not reverse a Department action based on the way in which the charge is labeled or the conduct characterized, provided the employee is on notice of the facts sufficient to respond to the factual allegations of the charge.

(e) The Director may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this section in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(f) Except as provided in § 9701.708, any decision under paragraph (b) of this

section is final unless a party to the appeal or the Director petitions MSPB for review within 30 days after receipt of the decision; or, MSPB reopens and reconsiders a case on its own motion. The Director may petition MSPB for review only if he or she believes the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation, or policy directive. MSPB, for good cause shown, may extend the filing period.

(g) If MSPB is of the opinion that the action could result in the appeals being processed more expeditiously and would not adversely affect any party, MSPB may—

(1) Consolidate appeals filed by two or more appellants; or

(2) Join two or more appeals filed by the same appellant and hear and decide them concurrently.

(h) MSPB may require payment by the Department of reasonable attorney fees if the action is reversed in its entirety and only if MSPB determines the action constituted a prohibited personnel practice, was taken in bad faith, or is without any basis in fact and law. However, if the employee is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the payment of reasonable attorney fees must be in accordance with the standards prescribed in section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(i)(1) The Board shall not require settlement discussions in connection with any appealed action under this section. If either party decides that settlement is not desirable, the matter will proceed to adjudication.

(2) Where the parties agree to engage in settlement discussions before MSPB, these discussions will be conducted by an official specifically designated for that sole purpose. Nothing prohibits the parties from engaging in settlement discussions on their own.

(j) If an employee has been removed under subpart F of this part and subsequently elects to retire, such retirement will not affect the employee's appeal rights.

(k) The following provisions modify MSPB's appellate procedures applicable to appeals under this subpart:

(1) All appeals, including class appeals, will be filed no later than 20 days after the effective date of the action being appealed, or no later than 20 days after the date of service of the Department's decision, whichever is later.

(2) Either party may file a motion for representative disqualification at any time during the proceedings.

(3) The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion, either party may seek to limit such discovery because the burden or expense of providing the material outweighs its benefit, or because the material sought is privileged, not relevant, unreasonably cumulative or duplicative, or can be secured from some other source that is more convenient, less burdensome, or less expensive.

(i) Prior to filing a motion to limit discovery, the parties must confer and attempt to resolve any pending objection(s).

(ii) Neither party may submit more than one set of interrogatories, one set of requests for production, and one set of requests for admissions. The number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts; in addition, each party may not conduct/ compel more than 2 depositions.

(iii) Either party may file a motion requesting additional discovery. Such motion may be granted only if the party has shown "necessity and good cause" to warrant such additional discovery.

(4) Requests for case suspensions must be submitted jointly.

(5) When there are no material facts in dispute, the adjudicating official must render summary judgment on the law without a hearing. However, when material facts are in dispute and a hearing is held, a transcript must be kept.

(6) MSPB or an adjudicating official may not reduce or otherwise modify any penalty selected by the Department. If fewer than all the charges are sustained, MSPB or an adjudicating official must direct the Department to promptly determine whether the penalty is still appropriate based on the sustained charge(s). The Department will promptly notify the MSPB of its penalty decision, which is final without any further appeal to MSPB. Within 5 days after receiving the Department's penalty decision, the MSPB will issue a final order incorporating that decision. Judicial review of any final MSPB order or decision is prescribed under 5 U.S.C. 7703.

(7) An initial decision must be made no later than 90 days after the date on which the appeal is filed. If that initial administrative decision is appealed to MSPB, MSPB must render its decision no later than 90 days after the close of the record before MSPB on petition for review. Any time spent by the Department making a penalty determination as provided for under § 9701.706(k)(6) does not count against these time limits.

(8) If the Director seeks reconsideration of a final MSPB order, MSPB must render its decision no later than 60 days after receipt of the opposition to OPM's petition in support of such reconsideration. MSPB is required to state the reasons for its decision so that the Director can determine whether to seek judicial review and to facilitate expeditious judicial review if the Director seeks it.

(9) MSPB, in conjunction with the Department and OPM, will develop and issue voluntary expedited appeals procedures for Department cases.

(l) Failure of MSPB to meet the deadlines imposed by paragraphs (k)(7) and (k)(8) of this section in a case will not prejudice any party to the case and will not form the basis for any legal action by any party.

§ 9701.707 Appeals of mandatory removal actions.

(a) Appeals of mandatory removal actions are governed by procedures set forth in this section. An employee may appeal such actions to an adjudicating official, whose decision may be further appealed to an independent Panel. Only the Secretary may mitigate the penalty in these cases.

(b) The initial appeal of a mandatory removal action must be to an adjudicating official designated by the Panel. Such official may conduct a hearing for which a transcript will be kept, to resolve any factual disputes and other relevant matters and will issue an initial decision. When there are no material facts in dispute the adjudicating official must render summary judgment on the law without a hearing. The adjudicating official must issue a written decision to each party and to OPM. Decisions of the adjudicating official are appealable by either party to the Panel.

(c) The appellant has the right to be represented by an attorney or other representative.

(d) An employee may appeal an initial decision to the Panel, which will issue a final decision in such matters.

(1) The Panel is composed of three members, appointed by the Secretary for 3-year terms. Members may be removed by the Secretary only for inefficiency, neglect of duty, or malfeasance. The Secretary will designate one member to serve as Chair of the Panel.

(2) A member of the Panel may be reappointed for additional terms. An individual chosen to fill a vacancy will be appointed for the unexpired term of the member replaced. The term of any member may not expire before the date

on which the member's successor takes office.

(3) Two members of the Panel constitute a quorum. A vacancy on the Panel does not impair the right of the remaining members to exercise all of the powers of the Panel.

(4) Panel members will be chosen for their expertise in adjudicating appeals, their knowledge of the Department's mission, and leadership experience in comparable organizations.

(e) The Panel must issue a written decision after conducting a de novo review of the record and must provide a copy of the decision to each party to the appeal and to OPM.

(f) The decision of the Department must be sustained if it is supported by substantial evidence, unless the employee shows by a preponderance of the evidence—

(1) Harmful error in the application of Department procedures in arriving at the decision;

(2) That the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) That the decision was not in accordance with law.

(g) In no case does the adjudicating official or Panel have the authority to reverse a Department action based on the way in which the charge is labeled or the conduct is characterized. When an employee is on notice of the facts sufficient to respond to the factual allegations of a charge, the Department will be determined to have complied with the required notice provisions.

(h) The Director may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this section in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(i) Except as provided in § 9701.708, any decision under paragraph (b) of this section is final unless a party to the appeal or the Director petitions the Panel for review within 30 days after receipt of the decision, or the Panel reopens and reconsiders a case on its own motion. The Director may petition the Panel for review only if he or she believes the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation, or policy directive. The Panel, for good cause shown, may extend the filing period.

(j) If the adjudicating official or Panel is of the opinion that the action could result in processing the appeal more expeditiously and that this would not adversely affect any party, the adjudicating official or Panel may—

(1) Consolidate appeals filed by two or more appellants; or

(2) Join two or more appeals filed by the same appellant and hear and decide them concurrently,

(k) The Panel may require payment by the Department of reasonable attorney fees if the action is reversed in its entirety and only if the Panel determines the action constituted a prohibited personnel practice, or was taken in bad faith, or is without any basis in fact and law. However, if the employee is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the payment of reasonable attorney fees must be in accordance with the standards prescribed in section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(l) If an employee has been removed under subpart F of this part, and subsequently elects to retire, such retirement will not affect the employee's appeal rights.

(m) The adjudicating official or Panel may not reduce or otherwise modify any penalty selected by the Department for a mandatory removal offense. If fewer than all the charges are sustained, the Panel or adjudicating official must direct the Department to promptly determine whether the penalty is still appropriate based on the sustained charge(s). This determination of whether the penalty is appropriate is final without any further appeal to the Panel.

(n) The Panel will develop and promulgate regulations for processing appeals of mandatory removal actions which must conform to the requirements set forth in § 9701.706(k)(1) through (8) and for such other matters as may be necessary to ensure the operation of the Panel.

(o) Failure of the Panel to meet any deadlines imposed under paragraph (n) of this section in a case will not prejudice any party to the case and will not form the basis for any legal action by any party.

§ 9701.708 Actions involving discrimination.

Section 7702 of title 5, U.S. Code, is modified to read "MSPB or Panel" wherever the terms "Merit Systems Protection Board" or "Board" are used.

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Friday,
February 20, 2004

Part IV

Department of Homeland Security

Office of the Secretary

6 CFR Part 29

Procedures for Handling Critical Infrastructure Information; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 29

RIN 1601–AA14

Procedures for Handling Critical Infrastructure Information; Interim Rule

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes procedures to implement section 214 of the Homeland Security Act of 2002 regarding the receipt, care, and storage of critical infrastructure information voluntarily submitted to the Department of Homeland Security. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism. The purpose of this regulation is to encourage private sector entities to share information pertaining to their particular and unique vulnerabilities, as well as those that may be systemic and sector-wide. As part of its responsibilities under the Homeland Security Act of 2002, this information will be analyzed by the Department of Homeland Security to develop a more thorough understanding of the critical infrastructure vulnerabilities of the nation. By offering an opportunity for protection from disclosure under the Freedom of Information Act for information that qualifies under section 214, the Department will assure private sector entities that their information will be safeguarded from abuse by competitors or the open market. In addition, information from individual private sector entities combined with those from other entities, will create a broad perspective from which the Federal government, State and local governments, and individual entities and organizations in the private sector can gain a better understanding of how to design and develop structures and improvements to strengthen and defend those infrastructure vulnerabilities from future attacks.

DATES: This interim rule is effective February 20, 2004. Comments and related material must reach the Department of Homeland Security on or before May 20, 2004.

ADDRESSES: Submit written comments to Janice Pesyna, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528. Electronic comments may be submitted to *cii.regcomments@DHS.gov*.

FOR FURTHER INFORMATION CONTACT: Janice Pesyna, Office of the General Counsel, (202) 205–4857, or Fred Herr, Information Analysis and Infrastructure Protection Directorate, (202) 360–3023, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Public Participation and New Request for Comments

The Department of Homeland Security (Department or DHS) encourages the public to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to the DHS Web site (*http://www.dhs.gov/pcii/*) and will include any personal information provided.

Submitting comments: To submit a comment, please include the full name and address of the person submitting the comment, identify the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and supporting material may be submitted by electronic means, mail, or delivery to the Department of Homeland Security, Washington, DC 20328. The Department will consider all comments and material received during the comment period. The Department may change this rule in view of them.

Regulatory History

On April 15, 2003, the Department published a notice of proposed rulemaking entitled "Procedures for Handling Critical Infrastructure Information" in the **Federal Register** (68 FR 18523), 6 CFR part 29, RIN 1601–AA14. As stated in the notice of proposed rulemaking, the Department intended to implement this interim rule as soon as possible. The Department finds that the need to receive critical infrastructure information, as soon as practicable, furnishes good cause for this interim rule to take effect immediately under section 808 of the Congressional Review Act.

For many years, private industry has indicated that its reluctance to share critical infrastructure information with the Federal government is based upon a concern that the information will not be adequately protected from disclosure to the public. Furthermore, private sector entities fear that entities intending to harm our nation, as well as potential business competitors, could seek to use the Freedom of Information Act or other disclosure processes to obtain sensitive or confidential business information not otherwise available to the public. Release of such information could facilitate the efforts of those persons or entities planning or attempting to cause physical or economic harm to our nation or to a particular company or industry.

The responsibilities of the Department include taking action to prevent terrorist attacks within the United States and reducing the vulnerability of the United States to acts of terrorism. The reduction of that vulnerability includes the protection of vital physical or computer-based systems and assets, collectively referred to as "critical infrastructure," the incapacitation or destruction of which would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of these matters.

The Department recognizes the importance of receiving information from those with direct knowledge of the security of that critical infrastructure in order to help reduce our nation's vulnerability to acts of terrorism. The Department believes the voluntary sharing of critical infrastructure information (CII) has been slowed due to concerns that information might be released to the public.

The Department recognizes that its receipt of information pertaining to the security of critical infrastructure, which is not customarily within the public domain, is best encouraged through the assurance that such information will be utilized for securing the United States and will not be disseminated to the general public. Accordingly, section 214 of the Homeland Security Act, subtitle B of title 2, which is referenced as the Critical Infrastructure Information Act of 2002 (CII Act of 2002), directly addressed this problem by establishing a program that protects from disclosure to the general public any CII that is voluntarily provided to the Department. Section 214(f) of the statute provides for fines and imprisonment under title 18 (Crimes and Criminal Procedure) of the United States Code for unauthorized disclosure of CII.

The interim rule will provide the Department with the framework necessary to receive CII and protect it from disclosure to the general public. This interim rule provides flexibility to allow the Department to adapt as program operations evolve. This interim rule sets out a basic set of regulations that implements the Protected CII Program. The Department will continue to consider public comments to this interim rule and determine whether possible supplemental regulations are needed as experience is gained with implementing the CII Act of 2002.

Discussion of Comments and Changes

The Department received 117 different sets of comments on the proposed rule during the initial comment period. The Department has considered all of these 117 sets of comments, and summaries of the comments and the Department's responses follow.

CII and Protected CII

The Department received six comments suggesting the need to make the distinction between CII and Protected CII clearer throughout the rule. This regulation establishes the program for the receipt, handling, use, and storage of a specialized category of information that is voluntarily submitted to the Department and meets the criteria for Protected CII. Not all CII necessarily will be Protected CII. Recognizing that the proposed rule did not in all instances use the terms "CII" and "Protected CII" consistently, the interim rule has been modified throughout where appropriate.

Indirect Submissions

The Department received 20 comments expressing concern regarding the proposed provision that would enable other Federal government entities to act as conduits for submissions of CII to the Department. Comments observed that extending the protections of the CII Act of 2002 to information submitted to agencies other than the Department was outside the authority of the Department. Further, comments highlighted the increased potential for unauthorized use and disclosure of information, as well as the burden that indirect submissions might place on other entities. Comments requested that all references to indirect submissions be removed and that the rule's terms be clarified so that no section could be interpreted to express or imply that material may be submitted to another Federal government agency.

Three comments supported allowing indirect submissions as proposed in the notice of proposed rulemaking; however, these comments, too, highlighted the need for clarification of how such a provision might be implemented and sought additional clarification to ensure that questions regarding the status of CII submitted to an entity other than the Department will be avoided. Support for indirect submissions recognized the Department's original intent, which was to further encourage the sharing of CII with the Federal government. Owners and operators of the nation's critical infrastructures have established relationships with other Federal agencies (*e.g.*, agencies that are sector leads for a particular infrastructure) and are comfortable sharing information with those entities. The Department did not want to impede information sharing and, consequently, our ability to protect our nation, by limiting the ability of submitters to share CII with the Department using those existing relationships.

Recognizing that, at this time, implementation of such a provision would present not only operational but, more importantly, also significant program oversight challenges, the Department has removed references throughout the rule to indirect submissions. Specifically, § 29.1 has been revised to ensure that "receive" is not interpreted to mean that material may be submitted to Federal government entities other than the Department. Section 29.2(i) has been revised to clarify that only the Department and no other Federal government entity shall be the recipient of voluntarily submitted CII. Sections 29.5(a), 29.5(b), and 29.5(c) have been revised to remove references to indirect submissions and to clarify that submissions must be made directly to the Protected CII Program Manager or the Program Manager's designee.

After the Protected CII Program has become operational, however, and pending additional legal and related analyses, the Department anticipates the development of appropriate mechanisms to allow for indirect submissions in the final rule and would welcome comments on appropriate procedures for the implementation of indirect submissions. Comments in support of, or opposed to, the proposed framework for indirect submission of CII to DHS should fully set forth, with relevant citations to the CII Act of 2002 and any other statutory, legislative, or case authorities that may be applicable, the basis for the position they advance.

Relationship Between Protected CII and Other Similar Regulations

The Department received four comments regarding the relationship between this rule and similar Federal agency rules such as the Transportation Security Administration's (TSA) Sensitive Security Information (SSI) rule and the Federal Energy Regulatory Commission's (FERC) Critical Energy Infrastructure Information (CEII) rule. The comments requested that the Department review and clarify the relation of the Department's procedures with similar procedures created by other Federal agencies for the same types of data.

Under certain limited circumstances, there may be information designated as CII under this interim rule that may also constitute SSI under regulations administered by TSA. SSI is information that the Administrator of TSA has determined must be protected from unauthorized disclosure in order to ensure transportation security. The TSA Administrator's authority to designate information as SSI is derived from 49 U.S.C. 114(s).

TSA's regulation implementing this authority, which is set forth at 49 CFR part 1520, specifies certain categories of information that are subject to restrictions on disclosure, both in the hands of certain regulated parties and in the hands of Federal agencies. Currently, the SSI regulation applies primarily to security information related to the aviation sector such as: Security programs and procedures of airport and aircraft operators; procedures TSA uses to perform security screening of airline passengers and baggage; and information detailing vulnerabilities in the aviation system or a facility. SSI is created by airports and aircraft operators and other regulated parties, pursuant to regulatory requirements. TSA also creates SSI, such as screening procedures and certain non-public security directives it issues to regulated parties. The SSI regulation prohibits regulated parties from disseminating SSI, except to those employees, contractors, or agents who have a need to know the information in order to carry out security duties.

Like the provisions of the Homeland Security Act governing CII, TSA's SSI statute and its implementing regulation trigger one of the statutory exemptions to the general disclosure requirements of the Freedom of Information Act (FOIA). *See* 5 U.S.C. 552(b)(3). Thus, both Protected CII and SSI held by the Federal government are exempt from public disclosure under the FOIA. In addition, TSA is currently considering amendments to its SSI regulation that would make it civilly enforceable against employees of DHS and the Department of Transportation, which are the Federal agencies most likely to maintain SSI. In contrast, unauthorized disclosure of Protected CII by a Federal employee is subject to criminal penalties.

Another key difference between SSI and Protected CII is the extent to which a Federal employee may disclose such information. Under TSA's SSI regulation, TSA may disclose SSI to persons with a need to know in order to carry out transportation security duties. This includes persons both within and outside the Federal

government. This rule proposes disclosure of Protected CII to entities that have entered into express written agreements with the Department and, in some cases, requires the written consent of the submitter before disclosure is permitted. Thus, in cases where information qualifies as both SSI and Protected CII, a Federal employee must treat the information according to the stricter disclosure limitations applicable to Protected CII.

In practice, the situations in which information constitutes both SSI and Protected CII may be limited. For the most part, information that is SSI is created by TSA or is required to be submitted to TSA or to another part of the Federal government. Therefore, it ordinarily will not be voluntarily submitted, which is a required element for Protected CII designation. In addition, SSI might or might not relate to critical infrastructure assets. Nonetheless, DHS will work to ensure that TSA's SSI regulation identifies any instances in which there may be an overlap between the SSI and Protected CII regulatory schemes and clarifies the applicable requirements for the handling of such information.

Other comments expressed concern regarding the relationship between Protected CII and the rule set forth in the Critical Energy Infrastructure Information program of the Federal Energy Regulatory Commission. These rules are not the same. They operate in a very different fashion with respect to the disclosure requirements of FOIA. On February 21, 2003, FERC promulgated final regulations establishing the CEII procedures, whereby persons with a demonstrated need to know who agree to no further dissemination can be provided with certain information not otherwise available through FOIA. (68 FR 9857 (March 3, 2003)) While information that meets the FERC definition of CEII remains protected from disclosure under existing FOIA exemptions, an alternative means of sharing certain CEII is established, including through a CEII Coordinator charged with verification of the need of requesters for access and the use of non-disclosure agreements via a non-FOIA disclosure track. In other words, the FERC program does not create any exempting authority that would change FOIA disclosure requirements, whereas section 214 of the Homeland Security Act, which is the basis for the Department's CII regulations, does.

Definitions

The Department received several comments regarding terms defined in § 29.2. The following sections address each of the terms in greater detail.

Critical Infrastructure and Protected System

The Department received two comments expressing concern that the terms "critical infrastructure" and "protected system" were not sufficiently defined. The comments suggested that examples be provided and that phrases such as "debilitating impact" be further defined. The Department notes that Congress in the CII Act of 2002 prescribed the definition of "protected system." The Department believes that the definition provides an appropriate degree of flexibility necessary to ensure that information pertaining to the protection of these assets could potentially be shared with the Department.

That said, the Department bases its construction of the regulatory definition on the CII Act of 2002 itself. The Department is mindful that private sector submitters, as the owners and operators of most of the nation's critical infrastructures, are the most well versed as to what information in their particular sector or industry might qualify as CII; therefore, the Department does not wish to unduly restrict the scope of what may be submitted as CII under the Act. As part of its evaluation process in determining whether information meets the criteria for Protected CII, the Department will consider the belief of the submitter that the information merits protection under the Act.

Critical Infrastructure Information

The Department received 11 comments suggesting that the definition of CII be expanded and clarified. Several of the comments wished to expand the definition to include network and topology information for critical infrastructures. The comments also emphasized that expansion of the definition would provide submitters with guidance regarding the type of information that the Department is looking to receive and also ensure that other important information is afforded the protections of the CII Act of 2002, therefore further encouraging submissions. The comments requested that a detailed explanation of "not customarily in the public domain" be provided and encouraged the Department to develop procedures for evaluating whether information is in the public domain. One comment requested that the rule further describe the specific records or information that would be considered by the Department for protection under the CII Act of 2002. Further, comments suggested that the rule specify what information is not CII so that submitters know what types of information should not be submitted. The Department notes that Congress in the CII Act of 2002 prescribed the definition of CII.

The Department believes that the definition provides the appropriate degree of flexibility necessary to further promote information sharing by providing submitters with an opportunity to provide the information they believe meets the definition and should be protected.

The Department also received two comments noting that the proposed rule defined CII as both records and information. Comments suggested that the term "record" be removed from the rule while other comments supported defining CII as both. As a practical matter, these two terms are virtually interchangeable in a context such as this. Accordingly, § 29.2 has been revised to say "CII consists of records including and information concerning * * *"

Voluntary/Voluntarily

The Department received 11 comments regarding the broad definition of "voluntary." The rule defines information that is not voluntarily provided as that information which the Department has exercised legal authority to obtain. The comments expressed concern that this could permit submitters to share with the Department information that is involuntarily collected by other Federal entities. The rule follows the explicit language of the Homeland Security Act and allows for the voluntary submission of information to the Department that is involuntarily collected by other Federal agencies, subject to certain requirements. These restrictions are found throughout the rule, primarily in § 29.3(a), which states that its procedures do not apply to or affect any obligation of any Federal agency to disclose mandatorily submitted information (even where it is identical to information voluntarily submitted pursuant to the CII Act of 2002), and § 29.5(a)(4), which has been added to the rule to address specific concerns raised by commenters. Section 29.5(a)(4) requires submitters to certify that the particular information is being voluntarily provided to the Department; that the information is not being submitted in lieu of independent compliance with a Federal legal requirement; that the information is of a type not customarily in the public domain; and whether the information is required to be submitted to a Federal

agency. If the information is required to be submitted to a Federal agency, the submitter must identify the Federal agency and the legal authority mandating that submission.

Good Faith

The Department received 26 comments requesting that the rule define the term "good faith" and establish procedures for determining that material has been submitted in good faith. Comments also asserted that the proposed rule had the potential to establish a system where material that was not submitted in good faith, and thus does not qualify for protection, would never be made public. Comments suggested that the Protected CII Program Manager should inform submitters when a decision is made that information was not submitted in good faith and provide them with an opportunity to provide an explanation. Other comments recommended deleting references to "good faith" in their entirety.

The Protected CII program is based upon a relationship of trust with the public that the information submitted will be carefully evaluated, marked, and utilized for the purposes of protecting the nation. As recommended by a number of these comments, § 29.5 has been revised, deleting the requirement for the submitters to *certify* that they are submitting the information in good faith. Instead, § 29.5 now provides that the submitters are presumed to have submitted the information in good faith. False representations may constitute a violation of 18 U.S.C. 1001 and are punishable by fines and imprisonment. The intent of such a provision is to provide a remedy to prevent a party from repetitively submitting information in bad faith solely to consume agency resources and from submitting information in an attempt to shield from the public any evidence of wrongdoing.

Independently Obtained Information

The Department received five comments regarding the definition of "independently obtained information." Comments claimed that the proposed definition was not consistent with the CII Act of 2002. In addition, one comment correctly noted that to ensure clarity the provision should be revised to indicate that independently obtained information does not include information that has been directly or indirectly derived from Protected CII. The Department has revised § 29.3(d) to alleviate confusion and ensure consistency with the legislation.

Protected CII Program Management and Administration

Consistent with the CII Act of 2002 and this regulation, the Under Secretary for Information Analysis and Infrastructure Protection (IAIP) is the official responsible for the receipt, safeguarding, storage, handling, and dissemination of Protected CII. The Under Secretary oversees and administers the Protected CII Program. Many comments expressed concern regarding details of the procedural implementation of the Protected CII Program. In addition, other comments recommended that the program begin operations as soon as possible after publication of this interim rule.

To implement this regulation in an efficient manner, the Department intends to use a phased approach that gradually expands the capabilities of the Program to receive submissions. Initially, submissions will be received only by the Protected CII Program Office within the Information Analysis and Infrastructure Directorate (IAIP) of the Department.

Subsequent phases will expand the points of entry for information within the Department. During the initial phase, only paper or electronic submissions (*e.g.*, floppy disks, CDs, etc.) delivered via U.S. Mail, commercial delivery service, courier, facsimile, or hand delivery will be accepted. As the Program evolves, e-mail and oral submissions (*i.e.*, voice mail or person-to-person) will be accepted. The capabilities of the Program to share information that has been validated as Protected CII also will expand. The Department envisions that Federal, State, and local government entities that would like to access and use Protected CII shall enter into an express written agreement with the Department. Such an agreement will outline the responsibilities for handling, using, storing, safeguarding, and disseminating Protected CII; require entities to put in place similar procedures for investigating suspected or actual violations of Protected CII procedures; and establish guidelines for imposing penalty provisions for unauthorized disclosure similar to those identified in the CII Act of 2002 and this regulation. Entities that do not sign such an agreement with the Department will not have access to Protected CII. Initially, the Department intends to share Protected CII only within the IAIP Directorate and with other DHS components, although exceptions may be made on a case-by-case basis. As the Program evolves and agreements with additional entities are finalized, the disclosure of information will expand to other Federal government entities, State, and local government entities, and eventually to foreign governments.

The Department received one comment suggesting that the proposed rule would overburden the Department by creating a situation where only one employee of the Department is responsible for receiving submissions and validating Protected CII. Other comments questioned how the Protected CII Program Manager would have the expertise, resources, and ability to handle the workload that may result from these provisions. The Department does not envision a situation in which only one employee is handling submissions and validating Protected CII. The Under Secretary for IAIP is responsible for directing the Protected CII Program and overseeing its day-to-day operations. In this capacity, the Under Secretary will ensure that the Program Manager or Program Manager's designees consult with other Department officials, as appropriate and necessary, to evaluate the validity of submissions. In addition, a staff and other resources required to perform the responsibilities outlined in the interim rule will support the Protected CII Program Manager. References throughout the rule to the Protected CII Program Manager have been revised to include "or designees", where appropriate, to indicate that other individuals will be designated to handle receipt, validation, and other duties related to the day-to-day operations of the Protected CII Program.

The Department also received three comments requesting that the rule be clarified to specify in greater detail the selection, training, and support of Protected CII Officers. The Department intends to encourage Federal, State, and local (including tribal) government entities that have signed an agreement with the Department to access and use Protected CII to appoint a Protected CII Officer who has been trained and is familiar with procedures for safeguarding, handling, transmitting, and using Protected CII. While this is addressed in greater detail in Protected CII Program procedures, the role of Protected CII Officer may be assigned to an individual in addition to their other duties. The Protected CII Program Manager shall establish procedures outlining the responsibilities of Protected CII Officers and will work with Federal government, and State and local entities in the identification, selection, training, and oversight of Protected CII Officers.

The Department received one comment recommending that

implementing directives discussing how the Protected CII Program will be managed be subject to public review and comment. The Department will follow all provisions of the Administrative Procedure Act in implementing the CII Act of 2002 and this regulation; all policies, and changes to policies, that are required to proceed by way of public notice will do so. Program office development, including but not limited to the Protected Critical Infrastructure Information Management System, used for tracking information voluntarily submitted under the Act, will be consistent with the existing standards of the Department and the Federal government. The Department intends to measure and assess the Program's performance and conduct internal audits to ensure that its goals and objectives are met. The Department recognizes that the success of the Protected CII Program depends on submitters and those with whom Protected CII is shared having an understanding and appreciation of Protected CII Program procedures.

Protected CII Management System

The Department received five comments expressing concerns about the Department's ability to adequately ensure the security of the Protected CII Management Systems (PCIIMS) database. The PCIIMS is a tracking system, not a storage database for the PCII itself. The PCIIMS will be used to track the receipt, acknowledgement, validation, storage, dissemination, and disposition of Protected CII. It is the Department's intent that Protected CII will be maintained in a manner that ensures that it is kept separate from information pertaining to the source of the submission. The Department received two comments requesting that the tracking number be extended to material that has been validated as Protected CII. In addition, one comment recommended that there be a mechanism to track the status of material marked as Protected CII in the event that the status of the information changes. The Department has reviewed this regulation and, consistent with this regulation and these comments, the tracking number assigned to the submission will accompany the material from the time that it is received by the Protected CII Program Manager. The Protected CII Program Manager will establish programs and procedures regarding the security of all Protected CII, including the data stored on the Protected CII Management System (PCIIMS). In addition, the Department will ensure compliance with all appropriate Departmental and Federal government information security policies.

Presumption of Protection

The Department received five comments regarding the presumption of protection afforded to submissions received by the Protected CII Program Manager but for which a final validation determination has not been made. These comments asserted that material does not qualify for protection just because it has been submitted to and received by the Department. The Department also received eight comments encouraging the Department to consider including a time frame for making validation determinations. Comments expressed concern that, combined with the presumption of protection, the lack of a time frame for validating submissions could result in material that does not qualify for protection retaining protection for long periods of time. The Department also received four comments supporting the presumption of protection. These comments noted that absent such a provision submitters would be unlikely to submit CII of a sensitive nature. The Department agrees that in order to promote information sharing the presumption of protection is a necessary provision. The Department agrees that the validation of submitted material must be completed in a timely manner. Submitters, the public, and users of Protected CII within Federal, State, local, and foreign governments must be assured that decisions will be made in a timely manner that allows Protected CII to be used appropriately. Additional language has been added to § 29.6(e)(1), therefore, indicating that the Protected CII Program Manager or designees will review and make a validation determination as soon as practicable following receipt of the submission. The Department considered identifying a more specific time frame; however, the Department does not believe it wise to limit the Program Manager's ability to determine what time frame is feasible given the constraints of program resources and the nature of the submissions received.

The Department also agreed with one of the comments that suggested the proposed language should be revised to read "presumed to be *and* will be treated" (emphasis added for clarification) in § 29.6(b). Section 29.6(b) has been revised accordingly.

Freedom of Information Act Requests

The Department received nine comments requesting that the rule be clarified to explain how FOIA requests will be handled during the period of time in which the Protected CII Program Manager is making a determination regarding whether the submission is Protected CII. Comments further recommended that when a FOIA request is received, the Protected CII status should be reviewed to ensure that the designation remains appropriate. Further, comments requested that submitters be notified when the Department receives a FOIA request concerning the information that they submitted. FOIA requests concerning Protected CII will be handled in accordance with the Department's existing FOIA processes and Executive Order 12600. *See* U.S. Department of Justice, Office of Information and Privacy's Freedom of Information Act Guide & Privacy Act Overview, May 2002 Edition. The Protected CII Program Manager or designees will work closely with the Department's FOIA Officer to handle FOIA requests of Protected CII in a manner consistent with FOIA.

Marking of Information

The Department received two comments highlighting a potential area of confusion regarding marking of materials for protection under the CII Act of 2002. The comments incorrectly asserted that material would be marked with the "express statement" and that the marking would provide direction for the material's handling. It is correct that submitters must include the express statement as identified in § 29.5(a)(3) when material is submitted to the Department; however, that statement is not used in the marking of Protected CII. When such information is validated and has been found to warrant protection under the CII Act of 2002, the Protected CII Program Manager will mark the material with the marking found in § 29.6(c), which makes specific reference to this regulation.

The Department received six comments requesting that the Department include provisions for segregating information so that information that is not protected under the CII Act of 2002 is clearly marked and only information that is absolutely necessary to the protection of the nation's critical infrastructure is kept from public view. The Department does not at this time intend to "portion mark" Protected CII. It is the Department's belief that requiring submitters to "portion mark" material at the time of submission may impede the full disclosure of information. Instead, the Department will consider a submission to be Protected CII as long as it in substance meets all of the requirements for protection. In making validation determinations, the Department will carefully review the

submitted information against the certification by the submitter to ensure that the information is provided voluntarily, in good faith, and is not required by law to be submitted to DHS.

Storage of Protected CII

The Department received seven comments regarding the storage of Protected CII material. Comments expressed concern that the requirements are not sufficient to protect against unauthorized access. For example, the comments noted that a "locked desk" is not generally recognized as a "secure container." In addition, comments suggested that additional safeguards should be considered for information that is aggregated within one facility, area, or system.

In response, § 29.7(b) has been revised to address these concerns about safeguarding Protected CII. In accordance with Federal government requirements for protecting information and information systems, the Department will take proper precautions to ensure that Protected CII is appropriately safeguarded. Furthermore, this section has been revised to clarify how Protected CII should be safeguarded when in the physical possession of a person.

Transmission of Information

The Department received eight comments regarding the treatment of U.S. first class, express, certified, or registered mail and secure electronic means as equivalent means of transmission in terms of the security they provide. Further, comments noted that § 29.7(e) did not allow for use of commercial delivery firms or person-to-person delivery. The comments noted that the proposed rule's specific listing of modes that were acceptable for transmitting information was restrictive. In response, the Department has broadened the language to include any secure means of delivery as determined by the Protected CII Program Manager. This change alleviates any problem of the rule implicitly, but unintentionally, prohibiting other transmission modes that were not included in the list. As technology advances, this language will allow the Department to utilize new transmission modes, as appropriate.

Disclosure of Information

The Department received two comments recommending that any advisories, alerts, and warnings issued to the public should not disclose the source of any voluntarily submitted CII that forms the basis for the warning or information that is proprietary, business sensitive, relates to the submitting person or entity, or is otherwise not appropriately within the public domain. The Department agrees with these comments in significant part. Section 29.8(a) has been modified to include language similar to that contained in the comments.

Twelve comments were received requesting that notification be made to submitters prior to disclosure of their information. Some of the comments also went so far as to request that the prior written consent of the submitter be obtained before Protected CII is disclosed. The comments also suggested that submitters should be made aware of the content of any alerts, advisories, and/or warnings that are issued based on Protected CII. The Department envisions that it will be able to track the disclosure of Protected CII to other Federal government entities and State, and local government entities. In addition, these entities will be asked to track further disclosure of Protected CII within their respective entities. The Department recognizes the desire of submitters to control the release of the information that they submitted; however, such a provision for prior notification has the potential to place a significant administrative burden on the Department. The Department does agree that further disclosure of information beyond those entities or individuals that have entered into a formal agreement with the Department may require the permission of the submitter.

The Department received seven comments regarding disclosure of Protected CII to contractors, each of which encouraged the Department to require contractors to comply with the requirements of this regulation through express written agreements with contractors. The Department received one comment requesting clarification regarding whether State and local governments would be able to share Protected CII with contractors acting on behalf of the Federal government and managing critical infrastructure assets without the submitter authorizing State and local entities to do so. The Department agrees that contractors should be required to comply with the requirements of this regulation. It is the intent of the Department that the Department as well as other Federal, State, and local government entities that access Protected CII shall put in place the necessary written agreements to ensure that the regulations are appropriately adhered to.

The Department received 14 comments regarding the sharing of Protected CII with foreign governments. The comments expressed concern that the CII Act of 2002 did not authorize the Department to share Protected CII with such entities; that express agreements to share Protected CII with foreign governments may be beyond the scope of the Act; and, if sharing information with foreign governments is not beyond the scope of the Act, then senior Department officials, as appropriate, should coordinate the agreements. Comments also questioned how the Department would verify that foreign governments are handling Protected CII appropriately and enforce criminal and administrative penalties if the material is not being handled in a manner consistent with the CII Act of 2002 and this rule. The Department believes that through the establishment of formal agreements with foreign governments, Protected CII can safely and properly be shared for important homeland security purposes. The comments also expressed concern that the proposed rule would allow release of information concerning the source of the Protected CII and other proprietary, business-sensitive information to foreign governments. Accordingly, § 29.8(j) has been revised to address this latter concern by protecting from public disclosure the source of any voluntarily submitted CII that forms the basis for the warning, as well as any information that is proprietary or business sensitive, relates specifically to the submitting party or entity, or is otherwise not appropriate for such disclosure.

Oral Submissions

The Department received one comment expressing concern that oral submission of CII may be chilled by the lack of clarity in the rule concerning the status of notes regarding CII submissions. The comment recommended that the definition of CII be expanded to include notes of oral conversations. The Department intends that notes made by the Protected CII Program Manager or designees shall be presumed to be and will be treated as Protected CII until a validation determination regarding the oral submission and the written version of the oral submission is made otherwise.

The Department received one comment requesting clarification of the process regarding acknowledgement of the receipt of orally submitted CII for protection under the CII Act of 2002. Section 29.6(d) has been revised to explain this process further. In addition, two comments correctly noted that § 29.6(d) was incorrectly numbered in the proposed rule, and the interim rule has been revised accordingly.

Destruction of Information

The Department received three comments noting that the proposed rule used a variety of terms (*e.g.*, "destroy," "dispose," "disposed," and "disposal of") to deal with the treatment of material that has been found not to warrant protection. The comments recommended the consistent use of either "destroy" or "destroyed" throughout the rule in accordance with the Federal Records Act. The interim rule has been revised throughout as appropriate.

Retaining Information for Law Enforcement and/or National Security Reasons

The Department received four comments requesting that the Department clarify what information would be retained for law enforcement and/or national security reasons that would not be Protected CII. The comments requested that language be included to demonstrate that the information would also be protected from disclosure under FOIA. Further, comments recommended that submitters be notified when a submission is retained for such purposes. The Department will retain information for law enforcement and/or national security reasons on a case-by-case basis. In some instances, information that has been found not to warrant protection under the CII Act of 2002 may be of significance for law enforcement and/or national security purposes. In that case, if the information is exempt from disclosure under other FOIA exemptions, the Department will consider such exemptions at the time that a FOIA request is received. In any case, the Department will handle such information in a manner commensurate with its nature and sensitivity.

Deference

The Department received seven comments regarding the deference given to submitters in the Department determination of what is CII. Comments stated that the language is ambiguous and provides too much discretion to the submitter. The Department will evaluate the submitter's claims that information meets the requirements for protection under the CII Act of 2002 and make the final determination regarding whether submitted information meets the requirements for protection. In response to these comments, the Department has removed references to deference. In addition, the Department agreed with two comments suggesting that submitters sign a statement attesting to the validity of their claims that a submission meets the requirements for protection. The Department has added to this interim rule (§ 29.5(a)(4)) the requirement that submitters sign a statement certifying that the submission meets the requirements for protection (*i.e.*, that the information is being provided voluntarily for the purposes of the CII Act of 2002; that the information is not being submitted in lieu of independent compliance with a Federal legal requirement; whether the information is required to be submitted to a Federal agency; and that the information is not customarily in the public domain). It is the intent of this provision to discourage unjustified claims for protection.

Change of Protected CII Status

The Department received 15 comments regarding the change of status from Protected CII to non-Protected CII. The comments recommended that the Protected CII Program Manager notify the submitter and any other parties with whom Protected CII has been shared of any changes in status. The comments also suggested that the circumstances under which a change of status may take place be enumerated in the rule. In response to these comments, § 29.6(f) has been modified to allow the submitter to request in writing that the status of Protected CII material be changed. In addition, the Department recognizes that there may be other circumstances that require the status of Protected CII to be changed. For example, changes may take place if the Program Manager subsequently determines that the information was customarily in the public domain, was required by Federal law or regulation to be submitted to DHS, or is now publicly available through legal means. In addition, § 29.6(f) has been revised to ensure that submitters and those entities with which the Protected CII was shared are made aware of the change in status.

Return and Withdrawal of Material

The Department received seven comments recommending that in addition to maintaining the information without protection and destruction of the information, submitters should be able to indicate that they would like submitted material returned to them in the event that a final validation determination is made that the submission is not Protected CII. Although the Department understands the desire of submitters to retain control over the information that they submitted, including such a provision has the potential to place a significant administrative burden on the Department.

The Department also received one comment requesting that the submitter be provided with the opportunity to withdraw the submission prior to a final validation determination. The Department agrees with this comment and has added language to § 29.6(e)(2)(i)(C) giving submitters an opportunity to withdraw submissions prior to a final validation determination.

Investigation of Violations

The Department received one comment requesting that submitters be notified when an investigation of improper disclosure has begun and the outcome of that investigation, therefore allowing the submitter to take steps to protect information in the event that the material was disclosed improperly. Two additional comments requested that a specific time frame for notification be identified in the rule. The Department disagrees that submitters should be notified when an investigation has begun. It is the Department's belief that at such a time submitters will want to know specific details regarding the suspected or actual violation. The Department will not have specifics until such time as the investigation is concluded and formal findings have been identified.

In addition, one comment was received regarding the requirement that "all persons authorized to have access to Protected CII" report suspected or actual violations. The comment suggested that all officers, employees, contractors, and subcontractors of the Department whether authorized to access Protected CII or not should report suspected or actual violations. The Department does not agree with this suggestion. The intent of § 29.9(a) is to encourage those individuals with access to Protected CII to self-report suspected or actual incidents. In addition, individuals that have not been granted access to Protected CII are unlikely to knowingly witness any abuses of Protected CII procedures. Those authorized to access Protected CII will be uniquely qualified to detect suspected or actual incidents of unauthorized access or misuse.

Whistleblower Protection

The Department received 10 comments suggesting that the application of the Whistleblower Protection Act is not sufficient to protect whistleblowers. The comments expressed concern that whistleblowers could be unfairly treated and subject to termination, fines, and imprisonment. This would discourage the accurate reporting of information vital to the public. The Department has modified

§ 29.8(f)(ii) to reference the Whistleblower Protection Act (WPA). Since the Department's intention is to afford the protections of the WPA, by referencing the WPA itself, the Department believes that it clearly ensures the full range of protections offered under the WPA.

An Appeals Process

The Department received two comments requesting that procedures for appealing determinations regarding Protected CII be included in these regulations. One comment suggested that submitters be provided with additional time to justify their assertion that a submission meets the requirements for protection if the submitter makes such a request. The Department believes that the procedures outlined in § 29.6(e) regarding validation determinations provide submitters with adequate time to justify their submissions. If the Department were to allow appeals of validation determinations or permit submitters to take longer than the thirty calendar days to respond, the Department would be contributing to situations in which information that might not be Protected CII remains in protected status.

No Private Right of Action

The Department received one comment concerning the ambiguity introduced by the proposed rule's reference to "no private rights or privileges" in § 29.3(e). The Department agreed with this comment and has revised the interim rule to ensure that the regulation is consisted with the statutory language. Section 29.3(e) is now entitled "No Private Right of Action."

Restrictions on Use of Protected CII in Civil Actions

The Department received three comments regarding the superfluous and potentially confusing use of the phrase "for homeland security purposes" in § 29.8(i). The Department agrees with these comments and has replaced that phrase with "under the CII Act of 2002."

FOIA Access and Mandatory Submission of Information

The Department received two comments pointing to ambiguities in § 29.3(a) and four comments supporting § 29.3(a). Comments sought to clarify through minor word changes that the provision was intended to prevent submitters from submitting material for protection under the CII Act of 2002 if the material already was required to be submitted to DHS under a Federal legal requirement. The Department agrees in significant part with the intent of the comments to distinguish between submissions of information to different agencies of the Federal government, consistent with the treatment of "independently obtained information" under section 214(c) of the statute, as is discussed in greater detail above. Therefore, § 29.3(a) has been modified accordingly.

Application of Various Laws and Executive Orders to This Interim Rulemaking

Good Cause for Immediate Effectiveness

DHS has determined that it is in the public interest to make this regulation effective upon publication in the **Federal Register**. DHS believes that information that would qualify as Protected CII and would assist DHS in implementing security measures is unlikely to be submitted to DHS before this regulation's effective date. After considering the likelihood that valuable information that likely is now being withheld because of fears that it might be handled without the protections that this regulation would prescribe, and the possibility that this information could be useful in deterring or responding to a security incident, DHS has concluded that the public interest is best served by making the regulation effective immediately.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State or local governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

Executive Order 12866 Assessment

Executive Order 12866 (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

DHS has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues since the events of September 11, 2001.

DHS has performed an analysis of the expected costs of this interim rule. The interim rule affects entities in the private sector that have critical infrastructure information that they wish to share with DHS. The interim rule requires that, when DHS receives, validates, and shares CII, DHS and the receiving parties, whether they be other Federal agencies or State or local governments with whom DHS has signed agreements detailing the procedures on how Protected CII must be safeguarded, must take appropriate action to safeguard its contents and to destroy it when it is no longer needed. The interim rule does not require the use of safes or enhanced security equipment or the use of a crosscut shredder. Rather, the interim rule requires only that an affected entity or person restrict disclosure of, and access to, the protected information to those with a need to know, and destroy such information when it is no longer needed. Under the rule, a locked drawer or cabinet is an acceptable means of complying with the requirement to secure Protected CII, and a normal paper shredder or manual destruction are acceptable means of destroying Protected CII documents.

Costs

DHS believes that affected entities will incur minimal costs from complying with the interim rule because, in practice, affected entities already have systems in place for securing sensitive commercial, trade secret, or personnel information, which are appropriate for safeguarding Protected CII. For instance, a normal filing cabinet with a lock may be used to safeguard Protected CII, and a normal paper shredder or manual destruction may be used to destroy CII. Accordingly, the agency estimates that there will be minimal costs associated with safeguarding Protected CII.

The agency has estimated the following costs for placing the required protective marking and distribution

limitation statement on records containing Protected CII.

For an electronic document, a person can place the required markings on each page with a few keystrokes. The agency estimates that there will be no costs associated with this action.

For a document that is already printed, a person can use a rubber stamp for the required markings. Such stamps can be custom ordered and last several years. For the protective marking, the agency estimates that the cost of a rubber stamp is from $9.90 (for a stamp 4¼ inches wide by ¼ inch high) to $10.25 (for a stamp 5 inches wide by ¼ inch high). A typical ink pad costs approximately $15.60. A two-ounce bottle of ink for the ink pad costs about $3.75.

For other types of record, such as maps, photos, DVDs, CD–ROMs, and diskettes, a person can use a label for the required markings. Labels typically cost from $7.87 (for 840 multipurpose labels) to $22.65 (for 225 diskette inkjet labels) to $34.92 (for 30 DVC/CD–ROM labels). These labels can be pre-printed with the required markings, or the affected person can print the required markings on an as-needed basis.

The interim rule does not require a specific method for destroying Protected CII. Thus, a person may use any method of destruction, so long as it precludes recognition or reconstruction of the Protected CII. DHS believes that most affected entities already have the capability to destroy CII in accordance with the requirements in this interim final rule. Thus, the agency estimates that there will be no costs associated with these destruction requirements.

Accordingly, DHS believes that the costs associated with this interim rule are minimal; however, the Department will accept comments addressing the estimated costs associated with the implementation of this rule.

Benefits

The primary benefit of the interim rule will be DHS's ability to receive information from those with direct knowledge on the security of the United States' critical infrastructure, in order to reduce its vulnerability to acts of terrorism by ensuring that information pertaining to the security of critical infrastructure is properly safeguarded and protected from public disclosure. In addition, based on information shared, DHS will provide threat information, security directives, and information circulars throughout the Federal, State, and local governments, to law enforcement officials, to the private sector, and other persons that have a need to know, and to act upon, information about security concerns related to the nation's critical infrastructure.

Prior to providing Protected CII to entities, and to ensure that any information these entities produce that would be treated as Protected CII is safeguarded, DHS must ensure that those entities are under a legal obligation to protect Protected CII from disclosure.

DHS notes that the unauthorized disclosure of Protected CII can have a detrimental effect not only on the ability to thwart terrorist and other criminal activities in the transportation sector, but also on the willingness of the private sector to share that information with DHS if that information might be publicly disclosed.

The effectiveness of providing Protected CII to persons involved with the protection of this country's critical infrastructures, and of security measures developed by those persons, depends on strictly limiting access to the information to those persons who have a need to know. Given the minimal cost associated with this interim rule and the potential benefits of preventing, or mitigating the effects of, terrorist attacks on the United States' critical infrastructures, DHS believes that this interim final will be cost-beneficial; however, the Department will accept comments addressing the anticipated benefits associated with the implementation of this rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, as amended (RFA), was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have a "significant impact on a substantial number of small entities." DHS has reviewed this rule and has determined that it will not have a significant economic impact on a substantial number of small entities for the following reasons:

(1) In practice, affected entities already have systems in place for securing sensitive commercial, trade secret, or personnel information, which are appropriate for safeguarding Protected CII. For instance, a normal filing cabinet with a lock may be used to safeguard Protected CII, and a normal paper shredder or manual destruction may be used to destroy CII. Accordingly, the agency estimates that there will be minimal costs associated with safeguarding Protected CII.

(2) The agency has estimated the following costs for placing the required protective marking and distribution limitation statement on records containing Protected CII.

(a) For an electronic document, a person can place the required markings on each page with a few keystrokes. The agency estimates that there will be no costs associated with this action.

(b) For a document that is already printed, a person can use a rubber stamp for the required markings. Such stamps can be custom ordered and last several years. For the protective marking, the agency estimates that the cost of a rubber stamp is from $9.90 (for a stamp 4¼ inches wide by ¼ inch high) to $10.25 (for a stamp 5 inches wide by ¼ inch high). A typical ink pad costs approximately $15.60. A two-ounce bottle of ink for the ink pad costs about $3.75.

(c) For other types of record, such as maps, photos, DVDs, CD–ROMs, and diskettes, a person can use a label for the required markings. Labels typically cost from $7.87 (for 840 multipurpose labels) to $22.65 (for 225 diskette inkjet labels) to $34.92 (for 30 DVC/CD–ROM labels). These labels can be pre-printed with the required markings, or the affected person can print the required markings on an as-needed basis.

(3) The interim rule does not require a specific method for destroying Protected CII. Thus, a person may use any method of destruction, so long as it precludes recognition or reconstruction of the Protected CII. DHS believes that most affected entities already have the capability to destroy CII in accordance with the requirements in this interim rule. Thus, the agency estimates that there will be no costs associated with these destruction requirements; however, the Department will accept comments addressing the impact on small entities associated with the implementation of this rule.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments.

Executive Order 13132—Federalism

The Department of Homeland Security does not believe this interim rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will benefit, however, from this interim rule to the extent that Protected CII is shared with

them. The Department requests comment on the federalism impact of this interim rule.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This rule does not contain provisions for collection of information, does not meet the definition of "information collection" as defined under 5 CFR part 1320, and is therefore exempt from the requirements of the PRA. Accordingly, there is no requirement to obtain OMB approval for information collection.

Environmental Analysis

DHS has analyzed this regulation for purposes of the National Environmental Policy Act and has concluded that this rule will not have any significant impact on the quality of the human environment.

List of Subjects in 6 CFR Part 29

Confidential business information, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons discussed in the preamble, 6 CFR chapter I is amended by adding part 29 to read as follows:

PART 29—PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

Sec.

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

§ 29.1 Purpose and scope.

(a) *Purpose of the rule.* This part implements section 214 of Title II, Subtitle B, of the Homeland Security Act of 2002 through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Federal government through the Department of Homeland Security. Title II, Subtitle B, of the Homeland Security Act is referred to herein as the Critical Infrastructure Information Act of 2002 (CII Act of 2002). Consistent with the statutory mission of the Department of Homeland Security (DHS) to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism, it is the policy of DHS to encourage the voluntary submission of CII by safeguarding and protecting that information from unauthorized disclosure and by ensuring that such information is expeditiously and securely shared with appropriate authorities including Federal national security, homeland security, and law enforcement entities and, consistent with the CII Act of 2002, with State and local officials, where doing so may reasonably be expected to assist in preventing, preempting, and disrupting terrorist threats to our homeland. As required by the CII Act of 2002, the procedures established herein include mechanisms regarding:

(1) The acknowledgement of receipt by DHS of voluntarily submitted CII;

(2) The maintenance of the identification of CII voluntarily submitted to DHS for purposes of, and subject to the provisions of the CII Act of 2002;

(3) The receipt, handling, storage, and proper marking of information as Protected CII;

(4) The safeguarding and maintenance of the confidentiality of such information that permits the sharing of such information within the Federal government and with foreign, State, and local governments and government authorities, and the private sector or the general public, in the form of advisories or warnings; and

(5) The issuance of notices and warnings related to the protection of critical infrastructure and protected systems in such a manner as to protect from unauthorized disclosure the identity of the submitting person or entity as well as information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is not customarily available in the public domain.

(b) *Scope.* These procedures apply to all Federal agencies that handle, use, or store Protected CII pursuant to the CII Act of 2002. In addition, these procedures apply to United States Government contractors, to foreign, State, and local governments, and to government authorities, pursuant to any necessary express written agreements, treaties, bilateral agreements, or other statutory authority.

§ 29.2 Definitions.

For purposes of this part:

Critical Infrastructure has the definition referenced in section 2 of the Homeland Security Act of 2002 and means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

Critical Infrastructure Information, or CII means information not customarily in the public domain and related to the security of critical infrastructure or protected systems. CII consists of records and information concerning:

(1) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms the interstate commerce of the United States, or threatens public health or safety;

(2) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation, risk-management planning, or risk audit; or

(3) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

Critical Infrastructure Information Program, or CII Program means the maintenance, management, and review of these procedures and of the information provided to DHS in furtherance of the protections provided by the CII Act of 2002.

Information Sharing and Analysis Organization, or ISAO means any formal or informal entity or collaboration created or employed by public or private sector organizations for purposes of:

(1) Gathering and analyzing CII in order to better understand security problems and interdependencies related to critical infrastructure and protected systems in order to ensure the

availability, integrity, and reliability thereof;

(2) Communicating or sharing CII to help prevent, detect, mitigate, or recover from the effects of an interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(3) Voluntarily disseminating CII to its members, Federal, State, and local governments, or to any other entities that may be of assistance in carrying out the purposes specified in this section.

Local Government has the same meaning as is established in section 2 of the Homeland Security Act of 2002 and means:

(1) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(2) An Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(3) A rural community, unincorporated town or village, or other public entity.

Protected Critical Infrastructure Information, or Protected CII means CII (including the identity of the submitting person or entity) that is voluntarily submitted to DHS for its use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement as described in § 29.5. This information maintains its protected status unless DHS's Protected CII Program Manager or the Protected CII Program Manager's designees render a final decision that the information is not Protected CII.

Protected System means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure and includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

Purpose of CII has the meaning set forth in section 214(a)(1) of the CII Act of 2002 and includes the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose.

Submission to DHS as referenced in these procedures means any transmittal of CII to the DHS Protected CII Program Manager or the Protected CII Program Manager's designees, as set forth in § 29.5.

Voluntary or Voluntarily, when used in reference to any submission of CII to DHS, means submitted in the absence of DHS's exercise of legal authority to compel access to or submission of such information; such submission may be accomplished by (*i.e.*, come from) a single entity or by an ISAO acting on behalf of its members. In the case of any action brought under the securities laws—as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—the term "voluntary" does not include information or statements contained in any documents or materials filed, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), with the Securities and Exchange Commission or with Federal banking regulators; and with respect to the submission of CII, it does not include any disclosure or writing that when made accompanies the solicitation of an offer or a sale of securities. The term also explicitly excludes information or statements submitted during a regulatory proceeding or relied upon as a basis for making licensing or permitting determinations.

§ 29.3 Effect of provisions.

(a) *Mandatory submissions of information.* The CII Act of 2002 and these procedures do not apply to or affect any requirement pertaining to information that must be submitted to DHS pursuant to a Federal legal requirement, nor do they pertain to any obligation of any Federal agency to disclose mandatorily submitted information (even where it is identical to information voluntarily submitted to DHS pursuant to the CII Act of 2002). The fact that a person or entity has voluntarily submitted information pursuant to the CII Act of 2002 does not constitute compliance with any requirement to submit that information to a Federal agency under any other provision of law. Information submitted to any other Federal agency pursuant to a Federal legal requirement is not to be marked as submitted or protected under the CII Act of 2002 or otherwise afforded the protection of the CII Act of 2002, provided, however, that such information, if it is separately submitted to DHS pursuant to these procedures, may upon submission to DHS be marked as Protected CII or otherwise afforded the protections of the CII Act of 2002.

(b) *Freedom of Information Act disclosure exemptions.* Information that is separately exempt from disclosure under the Freedom of Information Act or applicable State or local law does not lose its separate exemption protection due to the applicability of these procedures or any failure to follow them.

(c) *Restriction on use of Protected CII by regulatory and other Federal agencies.* No Federal agency shall request, obtain, maintain, or use information protected under the CII Act of 2002 as a substitute for the exercise of its own legal authority to compel access to or submission of that same information. Federal agencies shall not utilize Protected CII for regulatory purposes without the written consent of the submitter or another party on the submitter's behalf.

(d) *Independently obtained information.* These procedures shall not be construed to limit or in any way affect the ability of a Federal, State, or local government entity, agency, or authority, or any third party, under applicable law, to otherwise obtain CII by means of a different law, regulation, rule, or other authority, including such information as is lawfully and customarily disclosed to the public. Independently obtained information does not include any information derived directly or indirectly from Protected CII subsequent to its submission. Nothing in these procedures shall be construed to limit or in any way affect the ability of such entities, agencies, authorities, or third parties to use such information in any manner permitted by law.

(e) *No private right of action.* Nothing contained in these procedures is intended to confer any substantive or procedural right or privilege on any person or entity. Nothing in these procedures shall be construed to create a private right of action for enforcement of any provision of these procedures or a defense to noncompliance with any independently applicable legal obligation.

§ 29.4 Protected Critical Infrastructure Information Program administration.

(a) *IAIP Directorate Program Management.* The Secretary of the Department of Homeland Security hereby designates the Under Secretary of the Information Analysis and Infrastructure Protection (IAIP)

Directorate as the senior DHS official responsible for the direction and administration of the Protected CII Program.

(b) *Appointment of a Protected CII Program Manager.* The Under Secretary for IAIP shall:

(1) Appoint a Protected CII Program Manager within the IAIP Directorate who is responsible to the Under Secretary for the administration of the Protected CII Program;

(2) Commit resources necessary to the effective implementation of the Protected CII Program;

(3) Ensure that sufficient personnel, including such detailees or assignees from other Federal national security, homeland security, or law enforcement entities as the Under Secretary deems appropriate, are assigned to the Protected CII Program to facilitate the expeditious and secure sharing with appropriate authorities, including Federal national security, homeland security, and law enforcement entities and, consistent with the CII Act of 2002, with State and local officials, where doing so may reasonably be expected to assist in preventing, preempting, or disrupting terrorist threats to our homeland; and

(4) Promulgate implementing directives and prepare training materials as appropriate for the proper treatment of Protected CII.

(c) *Appointment of Protected CII Officers.* The Protected CII Program Manager shall establish procedures to ensure that any DHS component or other Federal, State, or local entity that works with Protected CII appoints one or more employees to serve as a Protected CII Officer for the activity in order to carry out the responsibilities stated in paragraph (d) of this section. Persons appointed to these positions shall be fully familiar with these procedures.

(d) *Responsibilities of Protected CII Officers.* Protected CII Officers shall:

(1) Oversee the handling, use, and storage of Protected CII;

(2) Ensure the expeditious and secure sharing of Protected CII with appropriate authorities, as set forth in § 29.1(a) and paragraph (b)(3) of this section;

(3) Establish and maintain an ongoing self-inspection program, to include periodic review and assessment of the entity's handling, use, and storage of Protected CII;

(4) Establish additional procedures as necessary to prevent unauthorized access to Protected CII; and

(5) Ensure prompt and appropriate coordination with the Protected CII Program Manager regarding any request, challenge, or complaint arising out of the implementation of these procedures.

(e) *Protected Critical Infrastructure Information Management System (PCIIMS).* The Protected CII Program Manager or the Protected CII Program Manager's designees shall develop and use an electronic database, to be known as the "Protected Critical Infrastructure Information Management System" (PCIIMS), to record the receipt, acknowledgement, validation, storage, dissemination, and destruction of Protected CII. This compilation of Protected CII shall be safeguarded and protected in accordance with the provisions of the CII Act of 2002.

§ 29.5 Requirements for protection.

(a) CII shall receive the protections of section 214 of the CII Act of 2002 only when:

(1) Such information is voluntarily submitted to the Protected CII Program Manager or the Protected CII Program Manager's designees;

(2) The information is submitted for use by DHS for the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purposes including, without limitation, the identification, analysis, prevention, preemption, and/or disruption of terrorist threats to our homeland, as evidenced below;

(3) The information is accompanied by an express statement as follows:

(i) In the case of written information or records, through a written marking on the information or records substantially similar to the following: "This information is voluntarily submitted to the Federal government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002"; or

(ii) In the case of oral information, within fifteen calendar days of the oral submission, through a written statement comparable to the one specified above, and a certification as specified below, accompanied by a written or otherwise tangible version of the oral information initially provided; and

(4) The submitted information additionally is accompanied by a statement, signed by the submitting entity, certifying essentially to the following on behalf of the named entity:

(i) The submitter is voluntarily providing the information for the purposes of the CII Act of 2002;

(ii) The information being submitted is not being submitted in lieu of independent compliance with a Federal legal requirement;

(iii) The information is or is not required to be submitted to a Federal agency. If the information is required to be submitted to a Federal agency, the submitter shall identify the Federal agency requiring submission and the legal authority that mandates the submission; and

(iv) The information is of a type not customarily in the public domain.

(b) Information that is not submitted to the Protected CII Program Manager or the Protected CII Program Manager's designees will not qualify for protection under the CII Act of 2002. Any DHS component other than the IAIP Directorate that receives information with a request for protection under the CII Act of 2002, shall immediately forward the information to the Protected CII Program Manager. Only the Protected CII Program Manager or the Protected CII Program Manager's designees are authorized to acknowledge receipt and validate Protected CII pursuant to § 29.6(a).

(c) Federal agencies and DHS components other than the IAIP Directorate shall maintain information as protected by the provisions of the CII Act of 2002 when that information is provided to the agency or component by the Protected CII Program Manager or the Protected CII Program Manager's designees and is marked as required in § 29.6(c).

(d) All submissions seeking Protected CII status shall be regarded as submitted with the presumption of good faith on the part of the submitter.

(e) Submissions must affirm the understanding of the submitter that any false representations on such submissions may constitute a violation of 18 U.S.C. 1001 and are punishable by fine and imprisonment.

§ 29.6 Acknowledgment of receipt, validation, and marking.

(a) *Authorized officials.* Only the Protected CII Program Manager or the Protected CII Program Manager's designees are authorized to acknowledge receipt of and validate information as Protected CII.

(b) *Presumption of protection.* All information submitted in accordance with the procedures set forth herein will be presumed to be and will be treated as Protected CII from the time the information is received by DHS, either through the DHS component or the Protected CII Program Manager or the Protected CII Program Manager's designees. The information shall remain protected unless and until the Protected CII Program Manager or the Protected CII Program Manager's designees render

a final decision that the information is not Protected CII.

(c) *Marking of information.* In addition to markings made pursuant to § 29.5(a) by submitters of CII requesting review, all Protected CII shall be clearly identified through markings made by the Protected CII Program Manager or the Protected CII Program Manager's designees. The Protected CII Program Manager or the Protected CII Program Manager's designees shall mark Protected CII materials as follows: "This document contains Protected CII. In accordance with the provisions of 6 CFR part 29, it is exempt from release under the Freedom of Information Act (5 U.S.C. 552(b)(3)). Unauthorized release may result in civil penalty or other action. It is to be safeguarded and disseminated in accordance with Protected CII Program requirements."

(d) *Acknowledgement of receipt of information.* The Protected CII Program Manager or the Protected CII Program Manager's designees shall acknowledge receipt of information submitted as CII and accompanied by an express statement and certification, and in so doing shall:

(1) Contact the submitter, within thirty calendar days of receipt, by the means of delivery prescribed in procedures developed by the Protected CII Program Manager or the Protected CII Program Manager. In the case of oral submissions, receipt will be acknowledged in writing within thirty calendar days after receipt by the Protected CII Program Manager or the Protected CII Program Manager's designees of a written statement, certification, and documentation of the oral submission, as referenced in § 29.5(a)(3)(ii);

(2) Maintain a database including date of receipt, name of submitter, description of information, manner of acknowledgment, tracking number, and validation status; and

(3) Provide the submitter with a unique tracking number that will accompany the information from the time it is received by the Protected CII Program Manager or the Protected CII Program Manager's designees.

(e) *Validation of information.*

(1) The Protected CII Program Manager or the Protected CII Program Manager's designees shall be responsible for reviewing all submissions that request protection under the CII Act of 2002. The Protected CII Program Manager or the Protected CII Program Manager's designee shall review the submitted information as soon as practicable. If a determination is made that the submitted information meets the requirements for protection, the Protected CII Program Manager or the Protected CII Program Manager's designee shall mark the information as required in paragraph (c) of this section, and disclose it only pursuant to § 29.8.

(2) If the Protected CII Program Manager or the Protected CII Program Manager's designees make an initial determination that the information submitted does not meet the requirements for protection under the CII Act of 2002, the Protected CII Program Manager or the Protected CII Program Manager's designees shall:

(i) Notify the submitter of the initial determination that the information is not considered to be Protected CII. This notification also shall:

(A) Request that the submitter further explain the nature of the information and the submitter's basis for believing the information qualifies for protection under the CII Act of 2002;

(B) Advise the submitter that the Protected CII Program Manager or the Protected CII Program Manager's designees will review any further information provided before rendering a final determination;

(C) Provide the submitter with an opportunity to withdraw the submission;

(D) Notify the submitter that any response to the notification must be received by the Protected CII Program Manager or the Protected CII Program Manager's designees no later than thirty calendar days after the date of the notification; and

(E) Request the submitter to state whether, in the event the Protected CII Program Manager or the Protected CII Program Manager's designees make a final determination that any such information is not Protected CII, the submitter prefers that the information be maintained without the protections of the CII Act of 2002 or be disposed of in accordance with the Federal Records Act.

(ii) If the Protected CII Program Manager or the Protected CII Program Manager's designees, after following the procedures set forth in paragraph (e)(2)(i) of this section, make a final determination that the information is not Protected CII, the Protected CII Program Manager or the Protected CII Program Manager's designees, in accordance with the submitter's written preference, shall maintain the information without protection or following coordination, as appropriate, with other Federal national security, homeland security, or law enforcement authorities, destroy it in accordance with the Federal Records Act unless the Protected CII Program Manager or the Protected CII Program Manager's designees, consistent with the coordination required in this subpart, determine there is a need to retain it for law enforcement and/or national security reasons. The Protected CII Program Manager or the Protected CII Program Manager's designees shall destroy the information within thirty calendar days of making a final determination. If the submitter, however, cannot be notified or the submitter's response is not received within thirty calendar days after the submitter received the notification, as provided in paragraph (e)(2)(i) of this section, the Protected CII Program Manager or the Protected CII Program Manager's designee will destroy the information in accordance with the Federal Records Act, unless the Protected CII Program Manager or the Protected CII Program Manager's designee, after coordination with other Federal national security, homeland security, or law enforcement authorities, as appropriate, determines that there is a need to retain it for law enforcement and/or national security reasons.

(f) *Changing the status of Protected CII to non-Protected CII.* Once information is validated, only the Protected CII Program Manager or the Protected CII Program Manager's designees may change the status of Protected CII to that of non-Protected CII and remove its Protected CII markings. Status changes may take place when the submitter requests in writing that the information no longer be protected under the CII Act of 2002 or when the Protected CII Program Manager or the Protected CII Program Manager's designee determines that the information was customarily in the public domain, is publicly available through legal means, or is required to be submitted to DHS by Federal law or regulation. The Protected CII Program Manager or the Protected CII Program Manager's designees shall inform the submitter when a change in status is made. Notice of the change in status of Protected CII shall be provided to all recipients of that Protected CII under § 29.8.

§ 29.7 Safeguarding of Protected Critical Infrastructure Information.

(a) *Safeguarding.* All persons granted access to Protected CII are responsible for safeguarding all such information in their possession or control. Protected CII shall be protected at all times by appropriate storage and handling. Each person who works with Protected CII is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

(b) *Use and storage.* When Protected CII is in the physical possession of a person, reasonable steps shall be taken to minimize the risk of access to Protected CII by unauthorized persons. When Protected CII is not in the physical possession of a person, it shall be stored in a secure environment that affords it the necessary level of protection commensurate with its vulnerability and sensitivity.

(c) *Reproduction.* Pursuant to procedures prescribed by the Protected CII Program Manager, a document or other material containing PCII may be reproduced to the extent necessary consistent with the need to carry out official duties, provided that the reproduced documents or material are marked and protected in the same manner as the original documents or material.

(d) *Disposal of information.* Documents and material containing Protected CII may be disposed of by any method that prevents unauthorized retrieval.

(e) *Transmission of information.* Protected CII shall be transmitted only by secure means of delivery as determined by the Protected CII Program Manager or the Protected CII Program Manager's designees.

(f) *Automated Information Systems.* The Protected CII Program Manager or the Protected CII Program Manager's designees shall establish security requirements for Automated Information Systems that contain Protected CII.

§ 29.8 Disclosure of Protected Critical Infrastructure Information.

(a) *Authorization of access.* The Under Secretary for IAIP, or the Under Secretary's designee, may choose to provide or authorize access to Protected CII when it is determined that this access supports a lawful and authorized Government purpose as enumerated in the CII Act of 2002, other law, regulation, or legal authority. Any disclosure or use of Protected CII within the Federal government is limited by the terms of the CII Act of 2002. Accordingly, any advisories, alerts, or warnings issued to the public pursuant to paragraph (e) of this section shall protect from disclosure:

(1) The source of any voluntarily submitted CII that forms the basis for the warning, and

(2) Any information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is not customarily in the public domain.

(b) *Federal, State, and local government sharing.* The Protected CII Program Manager or the Protected CII Program Manager's designees may provide Protected CII to an employee of the Federal government, or of a State or local government, provided that such information is shared for purposes of securing the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or for another informational purpose including, without limitation, the identification, analysis, prevention, preemption, and/or disruption of terrorist threats to our homeland. Protected CII may be provided to a State or local government entity only pursuant to its express written agreement with the Protected CII Program Manager to comply with the requirements of paragraph (d) of this section and that acknowledges the understanding and responsibilities of the recipient.

(c) *Disclosure of information to Federal contractors.* Disclosure of Protected CII to Federal contractors may be made only after the Protected CII Program Manager or a Protected CII Officer certifies that the contractor is performing services in support of the purposes of DHS, the contractor has signed corporate or individual confidentiality agreements as appropriate, covering an identified category of contractor employees where appropriate, and has agreed by contract to comply with all the requirements of the Protected CII Program. The contractor shall safeguard Protected CII in accordance with these procedures and shall not remove any "Protected CII" markings. Contractors shall not further disclose Protected CII to any of their components, additional employees, or other contractors (including subcontractors) without the prior written approval of the Protected CII Program Manager or the Protected CII Program Manager's designees, unless such disclosure is expressly authorized in writing by the submitter and is the subject of timely notification to the Protected CII Program Manager.

(d) *Further use or disclosure of information by State and local governments.*

(1) State and local governments receiving information marked "Protected Critical Infrastructure Information" shall not share that information with any other party, or remove any Protected CII markings, without first obtaining authorization from the Protected CII Program Manager or the Protected CII Program Manager's designees who shall be responsible for requesting and obtaining written consent for any such State or local government disclosure from the person or entity that submitted the information or on whose behalf the information was submitted.

(2) The Protected CII Program Manager or a Protected CII Program Manager's designee may not authorize State and local governments to further disclose the information to another party unless the Protected CII Program Manager or a Protected CII Program Manager's designee first obtains the written consent of the person or entity submitting the information.

(3) State and local governments may use Protected CII only for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.

(e) *Disclosure of information to appropriate entities or to the general public.* The IAIP Directorate may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, ISAOs or the general public regarding potential threats and vulnerabilities to critical infrastructure as appropriate. In issuing a warning, the IAIP Directorate shall protect from disclosure the source of any Protected CII that forms the basis for the warning as well as any information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is not customarily in the public domain.

(f) *Access by Congress and whistleblower protection.*

(1) Exceptions for disclosure.

(i) Pursuant to section 214(a)(1)(D) of the CII Act of 2002, Protected CII shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of the CII Act of 2002, except—

(A) In furtherance of an investigation or the prosecution of a criminal act; or

(B) When disclosure of the information is made—

(*1*) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(*2*) To the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(ii) If any officer or employee of the United States makes any disclosure pursuant to these exceptions, contemporaneous written notification must be provided to the Department through the Protected CII Program Manager.

(2) Consistent with the authority to disclose information for any purpose described in § 29.2, disclosure of Protected CII may be made, without the written consent of the person or entity submitting such information, to the DHS Inspector General, or to any other employee designated by the Secretary of Homeland Security.

(3) Subject to the limitations of title 5 U.S.C., section 1213 (the "Whistleblower Protection Act"), disclosure of Protected CII may be made by any officer or employee of the United States who reasonably believes that such information:

(i) Evidences an employee's or agency's conduct in violation of criminal law, or any other law, rule, or regulation, affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution or

(ii) Evidences mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution.

(4) Disclosures of all of the information cited in paragraphs (f)(1) through (3) of this section, including under paragraph (f)(1)(i)(A), are authorized by law and therefore are not subject to penalty under section 214(f) of the Homeland Security Act of 2002.

(g) *Responding to requests made under the Freedom of Information Act or State/local information access laws.*

(1) Protected CII shall be treated as exempt from disclosure under the Freedom of Information Act and, if provided by the Protected CII Program Manager or the Protected CII Program Manager's designees to a State or local government agency, entity, or authority, or an employee or contractor thereof, shall not be made available pursuant to any State or local law requiring disclosure of records or information. Any Federal, State, or local government agency with questions regarding the protection of Protected CII from public disclosure shall contact the Protected CII Program Manager, who shall in turn consult with the DHS Office of the General Counsel.

(2) These procedures do not limit or otherwise affect the ability of a State or local government entity, agency, or authority to obtain under applicable State or local law information directly from the same person or entity voluntarily submitting information to DHS. Information independently obtained by a State or local government entity, agency, or authority is not subject to the CII Act of 2002's prohibition on making such information available pursuant to any State or local law requiring disclosure of records or information.

(h) *Ex parte communications with decisionmaking officials.* Pursuant to section 214(a)(1)(B) of the Homeland Security Act of 2002, Protected CII is not subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official.

(i) *Restriction on use of Protected CII in civil actions.* Pursuant to section 214(a)(1)(C) of the Homeland Security Act of 2002, Protected CII shall not, without the written consent of the person or entity submitting such information, be used directly by any Federal, State, or local authority, or by any third party, in any civil action arising under Federal or State law if such information is submitted in good faith under the CII Act of 2002.

(j) *Disclosure to foreign governments.* The Protected CII Program Manager or the Protected CII Program Manager's designees may provide Protected CII to a foreign Government without the written consent of the person or entity submitting such information to the same extent, and under the same conditions, it may provide advisories, alerts, and warnings to other governmental entities as described in paragraph (e) of this section, or in furtherance of an investigation or the prosecution of a criminal act. Before disclosing Protected CII to a foreign government, the Protected CII Program Manager or the Protected CII Program Manager's designees shall protect from disclosure the source of the Protected CII, any information that is proprietary or business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriate for such disclosure.

(k) *Obtaining written consent for further disclosure from the person or entity submitting information.*

(1) Authority to Seek and Obtain Submitter's Consent to Disclosure. The Protected CII Program Manager or any Protected CII Program Manager's designee may seek and obtain written consent from persons or entities submitting information when such consent is required under the CII Act of 2002 to permit disclosure. In exigent circumstances, and so long as contemporaneous notice is provided to the Protected CII Program Manager or the Protected CII Program Manager's designees, any Federal government employee may seek the consent of the submitting party to the disclosure of Protected CII where such consent is required under the CII Act of 2002.

(2) Consequence of Consent. Whether given in response to a request from the Protected CII Program Manager, the Protected CII Program Manager's designees, or another Federal government employee pursuant to paragraph (k)(1) of this section, a person's or entity's consent to additional disclosure, if conditioned on a limited release of Protected CII that is made for DHS's purposes and in a manner that offers reasonable protection against disclosure to the general public, shall not result in the information's loss of treatment as Protected CII.

§ 29.9 Investigation and reporting of violation of protected CII procedures.

(a) *Reporting of possible violations.* Persons authorized to have access to Protected CII shall report any possible violation of security procedures, the loss or misplacement of Protected CII, and any unauthorized disclosure of Protected CII immediately to the Protected CII Program Manager or the Protected CII Program Manager's designees who shall in turn report the incident to the IAIP Directorate Security Officer and to the DHS Inspector General.

(b) *Review and investigation of written report.* The Inspector General, Protected CII Program Manager, or IAIP Security Officer shall investigate the incident and, in consultation with the DHS Office of the General Counsel, determine whether a violation of procedures, loss of information, and/or unauthorized disclosure has occurred. If the investigation reveals any evidence of wrongdoing, DHS, through its Office of the General Counsel, shall immediately contact the Department of Justice's Criminal Division for consideration of prosecution under the criminal penalty provisions of section 214(f) of the CII Act of 2002.

(c) *Notification to originator of Protected CII.* If the Protected CII Program Manager or the IAIP Security Officer determines that a loss of information or an unauthorized disclosure has occurred, the Protected CII Program Manager or the Protected CII Program Manager's designees shall notify the submitter of the information in writing, unless providing such notification could reasonably be expected to harm the investigation of that loss or any other law enforcement, national security, or homeland security interest. The written notice shall contain a description of the incident and the date of disclosure, if known.

(d) *Criminal and administrative penalties.* As established in section 214(f) of the CII Act, whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information protected from disclosure by the CII Act of 2002 and coming to the officer or employee in the course of his or her employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both, and shall be removed from office or employment.

Dated: February 12, 2004.

Tom Ridge,

Secretary of Homeland Security.

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Regional haze rule; Western States and eligible Indian Tribes; mobile source provisions; published 12-22-03

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Agricultural Marketing Service

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AGRICULTURE DEPARTMENT

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South Atlantic Fishery Management Council; meetings; comments due by 2-27-04; published 1-5-04 [FR 04-00090]

Northeastern United States fisheries—

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H.R. 2264/P.L. 108–200

Congo Basin Forest Partnership Act of 2004 (Feb. 13, 2004; 118 Stat. 458)

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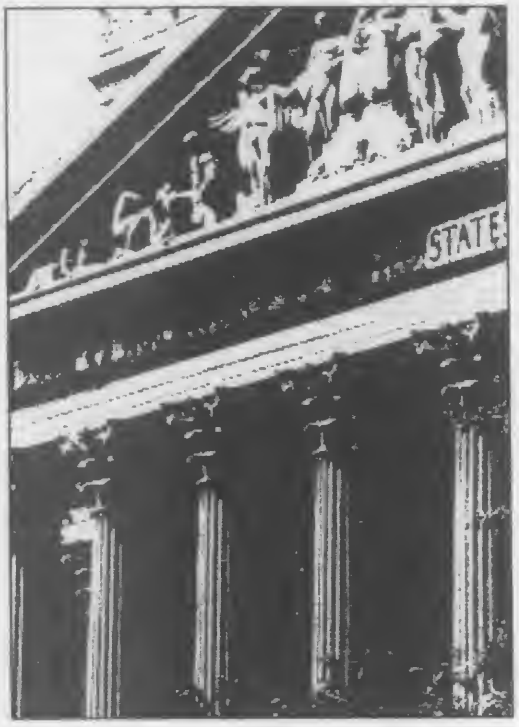

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