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4–29–04 Thursday
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Contents

Federal Register

Vol. 69, No. 83

Thursday, April 29, 2004

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
301 23415
457 23417
1951 23418
4284 23418
Proposed Rules:
319 23451

14 CFR
Proposed Rules:
39 (2 documents) 23456, 23458

15 CFR
732 23626
736 23626
740 23626
742 23626
744 23626
746 23626
762 23626
770 23598
772 23626
774 23598

18 CFR
358 23562

21 CFR
Proposed Rules:
59 23460

30 CFR
Proposed Rules:
948 23473

39 CFR
111 23436

50 CFR
660 23440
679 23450
Proposed Rules:
229 23477

Rules and Regulations

Federal Register
Vol. 69, No. 83
Thursday, April 29, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–109–1]

Imported Fire Ant; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of 20 counties in North Carolina. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: This interim rule is effective April 29, 2004. We will consider all comments that we receive on or before June 28, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 03–109–1, 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. 03–109–1.
- *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. 03–109–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant (*Solenopsis invicta* Buren and *Solenopsis richteri* Forel) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Adding all or parts of Cherokee, Clay, Cleveland, Durham, Orange, Polk, Randolph, and Wilson Counties, NC, to the quarantined area; and
- Expanding the quarantined areas in Cabarrus, Chatham, Edgecombe, Gaston, Harnett, Hertford, Johnston, Martin, Nash, Stanly, Wake, and Wayne Counties, NC.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. *See* the rule portion of this document for specific descriptions of the new and revised quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. 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.

We are amending the imported fire ant regulations by designating as quarantined areas all or portions of 20 counties in North Carolina. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

In 1996, the market value of agricultural products sold in the 20 counties affected by this action was more than $1.69 billion.[1] This value represented 22 percent of all agricultural products sold in North Carolina that year. During 1997, the value of nursery and greenhouse crops sold in the 20 counties was valued at a minimum of $66 million, 21 percent of the value of nursery crops sold in the State of North Carolina.

The entities potentially affected by this action include nurseries, greenhouses, farm equipment dealers, construction companies, and those entities that sell, process, or move regulated articles interstate from and through quarantined areas. In general, the adverse economic effects on the entities that move regulated articles interstate can be minimized by the availability of various treatments. In most cases, these treatments permit the movement of regulated articles with a small additional cost.

According to the standards established by the Small Business Administration (SBA), a small agricultural producer is one having $750,000 or less in annual sales, and a small equipment dealer or a small agricultural service company is one generating $5 million or less in annual sales.

In the 20 IFA-infested counties affected by this interim rule, there are at least 453 economic entities that could potentially be affected.[2] All of these were small entities according to SBA standards. According to the 1997 Census of Agriculture, these 20 counties received at least $658.6 million from selling all their crops; this value includes nursery crop sales.[3]

[1] 1997 Census of Agriculture, AC97–A–42, North Carolina: State and County Level Data, Volume 1, Geographic Area Series: Part 42, pages 166–178, table 1, County Summary Highlights. *http://www.nass.usda.gov/census/census97/volume1.*

[2] *See* footnote 1.

[3] *See* footnote 1.

The economic effects on entities in the 20 counties affected by this interim rule will depend on the proportion of their sales outside the quarantined area. When we compare the cost of an average shipment of nursery plants on a "standard" trailer truck with the value of these nursery plants, the range of the treatment cost is between 0.8 percent and 2 percent of the value of the plants. An average nursery plant costs between $1 and $25, and the value of the load of a standard tractor trailer, which can carry up to 10,000 plants, ranges between $10,000 and $250,000. However, the cost of treatment for a standard shipment of plants is between $116 and $200. The benefits of this action are substantial, both ensuring continued agricultural sales from the affected counties and preventing human-assisted spread of imported fire ant.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent 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 rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.81–3, paragraph (e), under the heading North Carolina, the entries for Cabarrus, Chatham, Edgecombe, Gaston, Harnett, Hertford, Johnston, Martin, Nash, Stanly, Wake, and Wayne Counties are revised and new entries for Cherokee, Clay, Cleveland, Durham, Orange, Polk, Randolph, and Wilson Counties are added to read as follows.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

North Carolina

* * * * *

Cabarrus County. The entire county.

* * * * *

Chatham County. The entire county.

Cherokee County. That portion of the county lying south and west of a line beginning at the intersection of the Cherokee/Clay County line and the North Carolina/Georgia State line; then north to U.S. Highway 64; then northwest along the southern shoreline of Hiwassee Lake to the Tennessee State line.

* * * * *

Clay County. That portion of the county lying southwest of State Highway 69 and the North Carolina/Georgia State line; then north along Interstate 70 to its intersection with U.S. Highway 64; then west along U.S. Highway 64 to the Clay/Cherokee County boundary.

Cleveland County. The entire county.

* * * * *

Durham County. That portion of the county lying south of Interstate 85.

Edgecombe County. That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Martin/Edgecombe County line; then southwest on State Highway 111 to U.S. Highway 64 Alternate; then west on U.S. Highway 64 Alternate to County Route 1252; then west of this northerly line to County Route 1408; then west on County Route 1408 to County Route 1407; then south on County Route 1407 to the Edgecombe/Nash County line.

Gaston County. The entire county.

* * * * *

Harnett County. The entire county.

Hertford County. That portion of the county lying south and east of a line beginning at the intersection of State Highway 11 and the Bertie/Hertford county line; then northeast on State Highway 11 to the U.S. Highway 13 Bypass; then northeast on U.S. Highway 13 to the Hertford/Gates County line.

* * * * *

Johnston County. The entire county.

* * * * *

Martin County. That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Edgecombe/Martin County line; then north and east on State Highway 111 to State Highway 11/42; then northeast along State Highway 11/42 to the Martin/Bertie County line.

* * * * *

Nash County. That portion of the county lying south and east of the line beginning at the intersection of U.S. Highway 64 and the Franklin/Nash County line; then northeast on U.S. Highway 64 to Interstate 95; then north on Interstate 95 to State Highway 4; then east on State Highway 4 to U.S. Highway 301; then east along a straight line from the intersection of State Highway 64 and U.S. Highway 301 to the Nash/Edgecombe County line.

* * * * *

Orange County. The portion of the county that lies south of Interstate 85.

* * * * *

Polk County. The entire county.

Randolph County. That portion of the county lying south of the line beginning at the intersection of State Highway 49 and the Davidson/Randolph County line; then east on State Highway 49 to U.S. Highway 64; then east on U.S. Highway 64 to its intersection with the Randolph/Chatham County line.

* * * * *

Stanly County. The entire county.

* * * * *

Wake County. The entire county.

* * * * *

Wayne County. The entire county.

Wilson County. The entire county.

* * * * *

Done in Washington, DC, this 23rd day of April, 2004.

William R. DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–9712 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB87 and RIN 0563–AB89

Common Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the interim Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Safflower Crop Insurance Provisions, Dry Pea Crop Insurance Provisions, Rice Crop Insurance Provisions, Dry Bean Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002.

EFFECTIVE DATE: June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The rule 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the

extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or 7 CFR 400.169, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Friday, June 28, 2002, FCIC published an interim rule in the **Federal Register** at 67 FR 43525–43526 to amend the Common Crop Insurance Regulations, Small Grains Crop Provisions (7 CFR 457.101) and Canola and Rapeseed Crop Insurance Provisions (7 CFR 457.161). The interim rule was effective on June 26, 2002. On June 9, 2003, FCIC published a final rule amending the Small Grains Crop Provisions (68 FR 34261), effective June 4, 2003, which superseded the interim rule for § 457.101. On Friday, August 30, 2002, FCIC published an the interim rule in the **Federal Register** at 67 FR 55689–55691 to amend the Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions (7 CFR 457.108), Coarse Grains Crop Insurance Provisions (7 CFR 457.113), Safflower Crop Insurance Provisions (7 CFR 457.125), Dry Pea Crop Insurance Provisions (7 CFR 457.140), Rice Crop Insurance Provisions (7 CFR 457.141), and Dry Bean Crop Insurance Provisions (7 CFR 457.150). The interim rule was effective on August 28, 2002. These interim rules implemented the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 102–171). Following publication of each interim rule, the public was afforded 60 days to submit written comments and opinions. No comments were received.

List of Subjects in 7 CFR Part 457

Common Crop Insurance Regulations.

Final Rule

■ Accordingly, as set forth in the preamble and under the authority of 7 U.S.C. 1506(l), 1506(p), except for the amendments to § 457.101, the interim rules amending 7 CFR part 457, published on June 28, 2002, and August 30, 2002, at 67 FR 43525 and 55689 respectively, are adopted as final.

Signed in Washington, DC, on April 21, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–9486 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951 and 4284

RIN 0570–AA40

General Requirements for Cooperative Services Grant Programs, Value-Added Producer Grants, Agriculture Innovation Centers and Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements new regulations for Value-Added producer grants (Value-Added Producer Grants) and a new demonstration program whereby agriculture innovation centers provide technical and other assistance to agricultural producers to help them establish businesses that produce and sell Value-Added agricultural commodities or products (Agriculture Innovation Centers). The Agricultural Innovation Center program is authorized under the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill). The 2002 Farm Bill also modified and extended the authority of the Secretary of the U.S. Department of Agriculture (Secretary) (USDA) to make Value-Added Producer Grants.

This rule implements regulations in one central location to consolidate requirements that are common to all grant programs administered by Cooperative Services within the Rural Business-Cooperative Service (RBS), thereby avoiding the necessity of repeating elements shared in common in each of the subparts dedicated to specific programs.

This rule amends regulations to reduce the matching requirement required of certain institutions of higher education with respect to Rural Cooperative Development Grants from 25 percent to 5 percent and to adjust the scoring criteria to reflect this change.

Finally, this rule amends regulations to add Value-Added Producer Grants and Agriculture Innovation Center Grants to the list of RBS programs covered by the servicing regulation in that part.

DATES: Effective Date: June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jim Haskell, Assistant Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3250, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3250, telephone (202) 720–8460, or internet e-mail *james.haskell@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be a significant regulatory action by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to these programs are 10.352 (Value-Added Grants), 10.771 (Rural Cooperative Development Grants) and 10.776 (Agriculture Innovation Centers).

Program Administration

These programs are administered through the Cooperative Services Program of the Rural Business-Cooperative Service Agency within the Rural Development mission area of USDA and delivered via the USDA Rural Development state directors.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number

The Agency published a notice requesting comments on the collection requirements (approved under OMB control number 0570–0045) contained in this rule for the Agriculture Innovation Center Grant program concurrent with the publication of the proposed rule on June 13, 2003 (68 FR 35321). No comments were received on the paperwork burden.

The information collection requirements associated with Value-Added Producer Grants and Rural Development Cooperative Grants were approved under OMB control numbers 0570–0039 and 0570–0006, respectively.

Government Paperwork Elimination Act

RBS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 13132, Federalism

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

I. Background

Section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill) authorized a new grant initiative to establish up to 15 agriculture innovation demonstration centers (Agriculture Innovation Centers or AICs) with the intent of fostering the ability of agricultural producers to reap the benefits of producing and marketing value-added products. Section 6401 of the 2002 Farm Bill expanded a value-added producer grant program initially established by section 231 of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224). These two provisions of the 2002 Farm Bill are the primary subjects of this rulemaking.

The Value-Added Producer Grant program was authorized in 2000. Over $57,000,000 in value-added producer grants have been awarded since this program was first authorized. This rule incorporates the broader standards for eligibility for future producer grants and reflects some of the lessons learned from the experiences of the U.S. Department of Agriculture in implementing this program over the past two years. For example, we have clarified that two separate types of grants are available, *i.e.*, planning and working capital grants, with slight differences in the respective application requirements and evaluation criteria.

The purposes for Value-Added Producer grants are primarily to support the development and implementation of business plans and marketing strategies for value-added products. These grants will be made directly to independent agricultural producers, eligible agricultural producer groups, farmer or rancher cooperatives, or majority-controlled producer-based business ventures. The 2002 Farm Bill added a new dimension to value-added efforts with the authorization of grants for a third value-added program, namely a demonstration program whereby the grant recipients are to be *centers* that provide technical assistance and marketing and development assistance to producers. The rule contemplates that the centers in question are not new buildings, per se, but may be research and resource centers operating under the umbrella of an established entity.

The eligibility requirements for the Agriculture Innovation Centers authorized in section 6402 of the 2002 Farm Bill place an emphasis on the recipients' capabilities and a plan and board management that reflect the needs of the agricultural community in their state. Their mandate is to provide technical assistance for marketing and business development assistance to enable agricultural producers to produce value-added agricultural products.

The Rural Business-Cooperative Service (RBS) published a notice in the **Federal Register** on June 13, 2003 of proposed program regulations for the Value-Added Producer Grant and Agricultural Innovation Center programs and notice of proposed changes to the existing program regulations for the Rural Cooperative Development Grant program (68 FR 35321). We received comments from 153 entities. We considered all comments in developing this final rule. The comments and the Agency's responses are summarized below.

II. Program Descriptions

A. Value-Added Producer Grants

Value-Added Agricultural Product

The term value-added agricultural product means any agricultural

commodity or product that has been changed, produced, or segregated such that the market for the product has expanded and where the greater portion of the revenue derived from the value-added activity accrues to the producer of the commodity or product.

Use of Grant Funds

The purpose of this program is to enable producers of agricultural commodities to participate in the economic returns to be found in the value-added market. Grants are to be used to develop business plans and develop strategies for creating marketing opportunities. Grants may also be used for feasibility studies and to provide capital to establish alliances or business ventures that allow the producers of the value-added agricultural product to better compete in domestic and international markets.

Grant funds may not be used for planning, repair, rehabilitation, acquisition, or construction of a building or a facility (including a processing facility), or for the purchase, rental, or installation of fixed equipment.

Eligibility

Grants will be awarded only to independent producers, eligible agricultural producer groups, farmer or rancher cooperatives or majority-controlled producer-based business ventures. Independent producers include agricultural producers, steering committees of producers and producer-owned corporations and associations who have an ownership interest in the agricultural product to which incremental value will accrue as a result of the proposed project.

Matching Funds

Grant recipients will provide matching non-Federal funds equal to the amount of the grant received. These matching funds must be expended in advance of grant funding, such that for every dollar of grant that is advanced, an equal amount of match funds shall have been funded prior to submitting the request for reimbursement.

B. Agriculture Innovation Centers

Use of Grant Funds

Grant funds are to be used for a demonstration program whereby centers are established to provide agricultural producers with technical and business development assistance for establishing businesses producing and selling value-added agricultural products, assistance in marketing, market development, business planning, outreach and organizational and development assistance to increase the viability, growth and sustainability of value-added businesses.

Grants may be used for the following purposes: applied research, consulting services, hiring of employees, the making of matching grants, legal services and other related costs of conducting the above activities. Funds for these purposes may not be used to plan, repair, rehabilitate, acquire, or construct a building or a facility (including a processing facility) or to purchase, rent, or install fixed equipment.

Eligibility

A grant may be made to an entity that demonstrates the capacity and technical expertise to conduct the activities described above. In addition to the capacity factor, the entity must provide a plan with specific goals to be met, its technical or other expertise and support for the entity in the agricultural community. Also, the entity must demonstrate that adequate resources (in cash or in kind) are available, or have been committed for this purpose which will allow the grant recipient to achieve the goals established. Finally, the entity must have a board of directors such that there are representatives of each of the following groups on the board: (a) The two general agricultural organizations with the greatest number of members in the State in which the entity is located, (b) the applicable State department of agriculture and (c) entities representing the four highest grossing commodities produced in the State, determined on the basis of annual gross cash sales. Trade associations are eligible to apply.

III. Rural Cooperative Development Grants and Conforming Amendments

Section 6015 of the 2002 Farm Bill reduced the match funding requirements for rural cooperative development grants imposed on certain institutions of higher learning from 25 percent to 5 percent. These institutions are defined as "1994 Institutions" and are listed by name in the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). This rulemaking amends the regulation applicable to this grant program to provide for this targeted reduced match funding requirement.

The amendments implemented for subpart F within 7 CFR part 4284 conform the regulations for the rural cooperative development grant program with the newly implemented subpart A that consolidates provisions common to all grant programs administered by Cooperative Services within RBS.

IV. Comments on the Proposed Rule and Responses

The following paragraphs summarize the major comments and Agency responses. The comments are grouped by the program to which they relate.

A. Comments on the General Requirements for Cooperative Services Grant Programs.

Comment: Two persons requested clarification on the definition of a producer, including what level of ownership is required and threshold of production required.

Response: Agree in part. We added the definition of an "Agricultural Producer" in § 4284.3. The definition states that farmers, ranchers, loggers, and fishermen are producers. Producers do not have to own the land, but they must be producing the product that has value added to it and they must have ownership of that product. That is, a logger, a fisherman, a wild herb gatherer, or a beef feeder may be considered a producer of logs, fish, wild herbs, or beef without owning all of the production assets. This definition will not include a threshold on the amount that has to be produced because production units and amounts vary widely among commodities.

Comment: One commenter requested that the definition for "Agriculture Producer Group" be modified to allow non-profit organizations without a producer majority of the board or membership to compete for the Value-Added Producer Grants and the Agriculture Innovation Center Grants.

Response: No change. While we agree that there are some non-profit organizations with expertise in value-added business and cooperative development that work on behalf of independent producers, many other organizations with similar expertise actually work on behalf of their own organization or in some cases the benefit of non-agriculture producer businesses. To assure that the grant funds actually benefit producers, it is our opinion that the independent producers must have majority control of any entity receiving the money.

Comment: One commenter asked that the definition of economic development be broadened to include social, economic, and environmental considerations.

Response: No change. The three programs under this regulation—Value-Added Producer Grants, Agriculture Innovation Centers, and Rural Cooperative Development Grants—are all rural business development programs. The authorizing legislation

does not include social or environmental considerations. Thus, the definition of economic development should only address the development of the economic base in rural areas.

Comment: One commenter suggested that in § 4284.3, the definition of "Rural and rural area" appears to prevent potential applicants who reside in rural areas from locating facilities in more heavily populated communities. The commenter suggested that grant applicants be allowed to locate rural-owned value-added facilities outside of rural areas when necessary due to sound business principles and infrastructure constraints without endangering their grant eligibility.

Response: No change. The legislation authorizing the Rural Cooperative Development Grant program specifies that the grants are to be used to facilitate the creation or retention of jobs in rural areas. The Value-Added Producer Grant and the Agricultural Innovation Center Grant programs do not have the restriction of facilitating the creation or retention of jobs in rural areas. Therefore Rural Cooperative Development Grant facilities must be located in a rural area, but Value-Added Producer Grant and Agriculture Innovation Centers do not.

Comment: Three commenters expressed confusion about whether using wind to produce energy is considered an agricultural product.

Response: Agree. We have added language to § 4284.3 to include using wind and hydro resources to produce energy on land that is farmed as a value-added activity.

Comment: One commenter expressed confusion over matching fund requirements for the different programs and the fact that those match requirements are unreasonable.

Response: No change. The matching funds requirements are specified in the authorizing legislation for each program. We have no authority to change those requirements. For all programs, the matching funds provided by the recipient must be expended for approved project costs in advance of federal funds.

Comment: One commenter requested that we specify whether producer labor can be considered matching funds.

Response: No change. Producer labor can be used as matching funds in certain cases. (See relevant sections of 7 CFR parts 3015 and 3019.)

Comment: One commenter indicated that the distinction between Rural Cooperative Development Grants and Agricultural Innovation Centers was unclear.

Response: No change. Section 4284.502 outlines how Rural Cooperative Development Grants will be used with further explanation of the use of the funds for the program explained in 4284.508. Section 4284.1001 outlines the purpose of the Agriculture Innovation Demonstration Centers with further explanation of the use of the funds for the program explained in § 4284.1008. It is our opinion that no further explanation is necessary.

B. Comments on the Value-Added Producer Grant (VAPG) Program

Comment: One commenter recommended that the entire VAPG Program be discontinued.

Response: No change. Under the Constitution, only Congress has the authority to end a legislated program.

Comment: One commenter believed the definition of a producer excluded forest-based businesses that rely on public lands and those that do contract logging on private lands.

Response: Agree in part. The authorizing legislation for the VAPG Program directs funds toward assisting agricultural producers, not manufacturers of agricultural products. We have expanded the definition of producer to include those who may not own the land, but do own the product that has value added to it. Thus, we believe "log producers" are eligible applicants under the revised definition.

Comment: One commenter noted that the definition of Independent Producers regarding contract production and joint ownership appears contradictory to the Majority-Controlled Producer-Based Business Venture definition as proposed.

Response: Agree in part. The definition is confusing. However, we do not consider producers who do not own the product produced to be independent. Therefore, we have modified the definition of "Independent Producers" in § 4284.3 to exclude producers who produce the agricultural product under contract for another entity, but do not own the product produced.

Comment: One commenter questioned whether the proposed definition of "Independent Producers" included steering committees.

Response: No change. We believe the definition of "Independent Producers" includes steering committees as defined in § 4284.3, "'An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture that will be owned and controlled by the independent producers supplying agricultural product to the market."

Comment: Two commenters noted that preventing applicants from using funds (including matching funds) for planning, repair, rehabilitation, acquisition, or construction of a building or facility, or for the purchase, rental, or installation of fixed equipment will created a significant barrier to promoting innovative partnerships, business-to-business ventures or public-private initiatives.

Response: No change. The authorizing legislation for the VAPG Program specifically prohibits the use of funds for planning, repair, rehabilitation, acquisition, or construction of a building or facility, or for the purchase, rental, or installation of fixed equipment.

Comment: One commenter was concerned that the structure of the VAPG Program, the criteria for evaluation, the match requirements, and the prohibition on the purchase of equipment and building of new facilities make the program of little use to forest-based businesses in rural communities despite the fact that the definition of "Agricultural Product" includes forestry products.

Response: No change. The match requirements and the prohibition on the purchase of equipment and the building of new facilities are contained in the authorizing legislation. We believe that the structure of the program and the evaluation criteria do not discriminate against forest-based business, but hold all types of businesses to the same standards.

Comment: Two commenters suggested that grant applicants applying for working capital funds certify that they have a financial record keeping system in place that meets minimum accounting standards.

Response: No change. Relevant sections of 7 CFR parts 3015 and 3019 already address this issue.

Comment: Two commenters noted that the proposed regulation did not include language limiting Majority-Controlled, Producer-Based Business Ventures to ten percent of the total funding for the program.

Response: Agree. Section 6401 of the 2002 Farm Bill amends section 231 of the Agricultural Risk Protection Act of 2000 to state in part, "The amount of grants provided majority-controlled producer-based business ventures under paragraph (1)(B) for a fiscal year may not exceed 10 percent of the amount of funds that are used to make grants for the fiscal year under this subsection." This limitation has been added to the language of the final regulation.

Comments: Three commenters expressed confusion over how many grants an entity may apply for and receive.

Response: Agree. These comments are partially addressed by § 4284.907(d) which states, "No project may be the subject of more than one Planning Grant or more than one Working Capital Grant. The same project may, however, be awarded one Planning Grant and subsequently apply for and receive a Working Capital Grant." However, the Agency believes the same project should not receive more than one planning grant or more than one working capital grant. Projects receiving Value-Added Producer Grants should be viable and sustainable. These grants are to assist the start of new ventures, not to sustain them. If a venture simultaneously needs more than one grant (either planning or working capital), it is not considered sustainable for purposes of this program. The Agency seeks to fund a broad diversity of projects and in so doing has determined that only one award per applicant per funding cycle is appropriate. The Agency believes a previously awarded applicant can apply for and receive another grant for a totally different project in a different funding cycle. A change to the final rule is included to reflect a project restriction of $500,000. This limitation applies to a project rather than a grantee and clarifying language has been added. See § 4284.909.

Comment: One commenter suggested that the restriction limiting funding to one project per applicant in proposed § 4284.907(e) be deleted or modified to accommodate applicants with diverse membership subgroups and a strong capability of managing federal funds.

Response: No change. We recognize that there are numerous potential applicants who could effectively manage several different projects. However, it is our policy to award grants to as many different recipients as possible to ensure that the maximum number of groups receive the opportunity to benefit from this program.

Comment: One commenter asked that we specify a maximum number of days between the deadline for the grant application and the time of grantee notification.

Response: No change. It is not possible for us to specify the number of days between the deadline for the grant application and the time of grantee notification because the volume and quality of applications is unknown for each funding cycle. It is our policy to conduct the review of the applications received and to notify grantees as quickly as possible.

Comment: One commenter asked if the "description of the task in detail" is required to be duplicated because § 4284.910 notes that "each of the proposal evaluation criteria referenced in the RFP must be addressed, specifically and individually in narrative form," while § 4284.913 states that one must provide "specific and detailed planning task descriptions."

Response: No change. We are asking for a narrative as part of the application and have detailed what items need to be in that narrative. At the same time the final rule provides information as to how that narrative will be evaluated. No duplication is required nor implied thus we feel no clarification is needed.

Comment: One commenter expressed concern that entities applying for planning grants may not be fully formed or financed until after the feasibility of the business and marketing plans are demonstrated.

Response: No change. The regulation provides for steering committees to be eligible applicants in order to accommodate organizations that are not fully formed.

Comment: One commenter pointed out that being able to apply for grants more than once per year would be helpful because projects may be idle for months as applicants wait for the next application period.

Response: No change. While we agree that multiple application periods per year would be helpful for applicants, we do not have the resources to properly administer the program more than once a year.

Comment: One commenter suggested having small planning grants available year-round to cover the costs of preliminary feasibility work to screen out non-viable projects before spending any more time or money.

Response: No change. The legislation that established this program does not allow for a set aside for small planning grants.

Comment: One commenter suggested allowing reimbursement of project expenses incurred prior to the award of the grant or allowing the payment by the recipient of those expenses to be used as matching funds for the grant.

Response: No change. Applicants may request reimbursement of pre-award costs in accordance with applicable sections of 7 CFR parts 3015 and 3019.

Comment: One commenter suggested that "substantial ranking points be given to projects that focus on solving marketing and distribution obstacles."

Response: No change. The authorizing legislation states what are considered eligible value-added activities in broad terms, but does not provide for preferences among those eligible activities. It is our policy to consider all eligible activities equally.

Comment: One commenter expressed confusion about the eligibility of agricultural production.

Response: Agree. We agree that the proposed regulation was confusing. Therefore, we have modified § 4284.907(a) to drop the reference to agricultural products and to refer back to the specific definition in this rule. Agricultural production expenses may be an eligible use of funds if they are a part of the differentiated production or marketing as demonstrated in a business plan.

Comment: One commenter requested that farmer and rancher cooperatives be able to utilize grants for existing as well as emerging markets.

Response: No change. The authorizing legislation specifies that farmer and rancher cooperatives use grant funds for emerging markets only.

Comment: Six commenters suggested that priority in the scoring of grant applications be given to the development of all biobased products, not just bioenergy.

Response: No change. We have awarded points for proposals with substantive bioenergy components in the past because bioenergy was a Presidential initiative. In this regulation, however, the evaluation criteria in § 4284.913 do not include any criteria for bioenergy. Rather, criterion number 8 indicates that we may award points in the future for proposals that focus on Presidential initiatives. Because Presidential initiatives can change over time, we will announce descriptions of the initiative(s) and the points to be awarded with the applicable NOFA. Thus, it is possible that the program could award extra points for all biobased products in the future. The VAPG program also allows up to five additional points to be awarded to a proposal by the Agency's Administrator to help accomplish Agency objectives such as implementing Presidential initiatives.

Comment: 116 commenters recommended awarding additional points to proposals that focus on small- and medium-sized farms.

Response: No change. The authorizing legislation for the VAPG program (the Agricultural Risk Protection Act of 2000 as amended by the 2002 Farm Bill) does not give special consideration to any size, type, or class of producer and rancher, except in one area. Should the sustainability of small- and medium-sized farms and ranches become a

Presidential initiative, criterion number 8 can be changed to reflect this new emphasis. Also, the VAPG program allows up to five additional points to be awarded to a proposal by the Agency's Administrator to help accomplish Agency objectives, including the implementation of Presidential initiatives. Thus, if the promotion of small- and medium-sized farms becomes a Presidential initiative, Administrator points could be awarded to proposals that focus on these farms and ranches. Also, of the four types of eligible applicants defined in the authorizing legislation, only independent producers are exempt from the "emerging markets" requirement. Many small and medium-sized farms and ranchers are eligible as "Independent Producers," and, thus, have one less condition to satisfy. Plus, evaluation criterion 6 (Amount Requested) awards greater points for the smaller grant dollar requests. Small- and medium-sized enterprises often have smaller grant requests and may take advantage of this criterion.

Comment: Two commenters suggested we add language to the regulation concerning the eligibility of research for grant funds. One commenter suggested that we add language indicating grant funds may be used for research into the development of products while another commenter suggested we clearly note that research and development costs are not eligible uses of funds.

Response: Agree. We have added language to § 4284.10 clearly expressing that grant funds may not be used for research and development. There are many other grant programs that do support research and development, and we believe the primary focus of this program is marketing developed products.

Comment: One commenter suggested we add points to proposals that bring value-added business opportunities to economically distressed rural areas and Indian reservations.

Response: No change. The authorizing legislation does not target either of these two areas. However, should increasing business opportunities to economically distressed rural areas and Indian reservations become a Presidential initiative, criterion number 8 can be changed to reflect this new emphasis. Also, the VAPG program allows up to five additional points to be awarded to a proposal by the Agency's Administrator to help accomplish Agency objectives, including the implementation of Presidential initiatives. Thus, if increasing business opportunities to economically distressed rural areas and Indian reservations becomes a Presidential initiative, Administrator points could be awarded to proposals that focus on these activities.

Comment: 116 commenters suggested adding language to the evaluation criteria to give more weight to those proposals that contribute to environmental health and sustainability.

Response: No change. The authorizing legislation does not target this area, and we believe that a standard evaluation of environmental health and sustainability is not possible. Should environmental health and sustainability become a Presidential initiative, criterion number 8 can be changed to reflect this new emphasis. Plus, the VAPG program allows up to five additional points to be awarded to a proposal by the Agency's Administrator to help accomplish Agency objectives such as implementing Presidential initiatives. Thus, if the promotion of environmental health and sustainability becomes a Presidential initiative, Administrator points could be awarded to proposals that focus on this activity.

Comment: One commenter suggested limiting eligibility to cooperatives.

Response: No change. The authorizing legislation specifically identifies the eligible entities for this program. We do not have the authority to restrict eligibility beyond what is authorized by Congress.

Comment: One commenter noted that in § 4284.3, there are definitions for both "cooperatives" and "farmer cooperatives" that could be mutually inconsistent.

Response: Agree. We have removed the term "Cooperative" and revised the definition for "Farmer or Rancher Cooperative" to be specific to farmer or rancher-owned and controlled businesses from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners. We have observed a trend in state cooperative incorporation law to allow more and more outside (non-farmer or non-rancher) investment in agricultural cooperatives. In one state, up to 85 percent of the members of agricultural cooperatives can be non-producers. The purpose of the value-added programs is to help agricultural producers, however, and we are of the view that program funding should be strictly targeted to recipients that meet the definition in this final rule.

Comment: One commenter noted in § 4284.3 that there is no definition for a feasibility study. The commenter expressed confusion about the difference between a feasibility study and feasibility analysis and suggested that definitions be provided.

Response: No change. We do not believe there is a difference between feasibility analysis and conducting a feasibility study. Both terms describe the same activity, that that activity is an eligible use of grant funds.

C. Comments on the Agricultural Innovation Center (AIC) Program

Comment: Six commenters suggested that the composition of the Board of Directors specified in § 4284.1004 be modified to include additional or alternative members. Two additional commenters recommended that existing centers not be required to change their Board of Directors composition in order to be eligible for the grant.

Response: No change. The authorizing legislation specifies the composition of the Board of Directors and does not provide for that composition to be modified or for any entity to be exempt from that requirement.

Comment: Four commenters expressed confusion about the definition of a "Center" provided in § 4284.1004 as well as the eligibility of existing centers.

Response: No change. The definition of a "Center" provided in the regulation does not imply that existing entities that consider themselves to be agriculture innovation centers are ineligible to apply for this grant. Any entity that meets the eligibility criteria listed in § 4284.1007 is eligible to apply for this grant.

Comment: Two commenters noted that it was unclear whether scale production is an eligible use of grant funds.

Response: Agree. We have made express provision for Scale Production Assessment studies as an eligible use of funds, where these studies look at a variety of plant sizes to determine which size is most efficient for the proposed value-added activity. Note that the eligible use does not refer to building new facilities—an activity explicitly prohibited by the authorizing legislation. We have added a definition of scale production assessments to § 4284.1004.

Comment: One commenter noted that he could not find any reference in the proposed rule to the maximum grant amount, the matching requirements, and the length of the grant period.

Response: Agree. The authorizing legislation clearly states the maximum grant amount and § 4284.1009 has been added to the final rule to reflect that maximum amount. The grant period will be addressed in the applicable grant agreement.

Comment: One commenter suggested that trade associations, marketing

associations, and flexible manufacturing networks should be eligible for the grant.

Response: No change. Section 4284.1007 defines the eligibility requirements for this grant. Any trade or marketing association controlled by producers is eligible if it defines a specific group of producers to be helped.

Comment: Two commenters suggested modifying § 4284.1008(d) to include education and training as eligible uses of grant funds.

Response: No change. The authorizing legislation specifies that the agricultural producers to be provided are "technical assistance, consisting of engineering services, applied research, scale production, and similar services, to enable the agricultural producers to establish businesses * * *," but does not allow for the more indirect help of education and training. Also, because education and training are funded by other sources, there is no need to include them as eligible uses in this program.

Comment: One commenter expressed confusion about the statement in proposed § 4284.1009(c)(5)(ix) that says, "If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined." The commenter believed that we had failed to address the documentation needed by non-legal entities.

Response: No change. An applicant must be a legal entity to apply for the grant. The statement in question is meant to distinguish between the documentation needed by Centers that are stand-alone entities (*i.e.*, independent legal entities) and the documentation needed by Centers that are subsidiaries of another legal entity.

Comment: Four commenters, in reference to proposed § 4284.1012, suggested that preference should be given to organizations that can demonstrate expertise and ability to provide assistance as well as a proven track record of success in providing technical assistance.

Response: No change. We believe the selection criteria "ability to deliver," "successful track record," and "qualifications of personnel" adequately address an organization's ability and experience in providing technical assistance and other producer services as well as its track record in providing those services.

Comment: One commenter suggested that the following language be added to § 4284.1012(b): "and in reaching and serving the full range and diversity of agriculture within the State, including small and medium-sized farms and ranches, young and beginning farmers, and socially disadvantaged producers." Similarly, the commenter asked that the local support activity reflect special consideration for the same group of producers as well as a broad diversity of others.

Response: No change. Because the authorizing legislation does not give special consideration to any size, type, or class of producer and rancher, it is our opinion that neither the applicant's track record, nor the local support record, can be based on any of these special considerations.

Comment: Three commenters expressed concern that the evaluation criterion in § 4284.1012(d) placed too much emphasis on in-house expertise.

Response: No change. We recognize that no Center will be able to have 100 percent of the necessary expertise in-house. The Agency recognizes the value of contractors and the contribution they can make to rural development. Applicants will be rewarded if they can show they have qualified consultants on retainer. However, we believe it is important to have enough in-house expertise in technical assistance activities and administrative activities to ensure that all services are delivered effectively and efficiently, including those of contractors. By providing a greater reward to applicants who have a higher level of in-house expertise, we believe this will help increase the effective and efficient delivery of services.

Comment: One commenter suggested that experience in forming farmer-owned cooperatives and helping cooperatives develop business plans should be emphasized in the evaluation criteria.

Response: No change. The focus of this program is not cooperative development, but rather assisting producers with producing and marketing value-added products. It is our position that the Centers should be able to provide assistance with whatever business model they and producers find to be most effective for each individual situation rather than encouraging one business model over another in all situations.

Comment: Three commenters suggested that Centers be mandated to support the development of biobased products.

Response: No change. It is our position that the Centers and the producers they assist should choose the products that they believe will be sustainable and profitable rather than have us dictate what products should be produced and marketed.

D. Comments on the Rural Cooperative Development Grant (RCDG) Program

Comment: One commenter expressed concern about a perceived change in focus from a broad vision of cooperative development to a more limited technical scope. The commenter also suggested a decrease in focus on low income and minority people living in distressed rural areas.

Response: No change. We believe there has been no change in the scope of the program. This program has always sought to support a variety of technical assistance activities in those centers that received funding. These include conducting feasibility analyses, developing business plans, conducting marketing studies, providing organizational advice, and conducting educational activities. We will continue to encourage centers funded under the revised regulation to offer a full array of technical assistance services. Also, the focus on low income and minorities in distressed areas has not changed. One of the selection criteria continues to be the level of commitment the applicant has to providing technical assistance to underserved and economically distressed areas.

Comment: One commenter notes that a set aside for minority-owned and controlled centers is not mentioned in the proposed regulation.

Response: The set aside for minority centers is not part of the authorizing legislation (the Consolidated Farm and Rural Development Act as amended by the 2002 Farm Bill). This set aside has been authorized by various annual appropriations legislation in the past. Because the set aside is not part of the program's authorizing legislation, it is not included in the regulation.

Comment: One commenter noted an inconsistency between § 4284.502 and § 4284.508. The policy section includes development of rural cooperatives, value-added processing businesses, and rural businesses. The section addressing use of grant funds includes only the development of rural cooperatives.

Response: Agree. The focus of the RCDG Program is cooperative development, not general business development. We have added language to § 4284.502 to clarify this focus.

Comment: One commenter suggested that cooperative development centers should be required to have stakeholder representation on their governing boards. The commenter also suggested an independent survey of stakeholders to evaluate outcomes of Center activities and qualifications of the Centers.

Response: Agree in part. The authorizing legislation has no requirement that Centers have boards and so we did not dictate the composition of the boards. We agree that a survey of stakeholders is a good idea and we will seriously consider conducting a survey. However, conducting the survey would be an Agency activity rather than a center activity, so it will not be addressed in the regulation.

Comment: One commenter expressed concern that the limitation in § 4284.509 restricting grants to one-year or less time periods does not support ongoing technical assistance. The commenter suggested that ongoing funding should be tied to evaluation of results by stakeholders.

Response: No change. The program appropriations are made on an annual basis and future funding levels are unknown. Thus, it is our policy to fund one-year grant periods. Previous recipients must successfully demonstrate a proven track record and evidence of project completion through competition with other applicants in order to receive funding.

Comment: Eleven commenters had concerns regarding the evaluation criteria of "Future Support" listed in § 4284.513. The focus of these comments was that centers should not be rewarded for having plans for non-RCDG funding.

Comment: Disagree. The RCDG Program is a competitive grant program, not an entitlement. Cooperative development centers compete with each other on an annual basis for these grant funds. Currently funded cooperative development centers are not assured funding in the following year. There have been a number of centers funded for one or two years and not funded the next year. Farmers and other rural residents, including underserved and minority groups, have been adversely affected in these situations. We believe that those centers who find other funding sources should be rewarded because they are better able to serve their customers in the event they do not receive RCDG funding. We have revised the Future Support criterion to better reflect our position on this issue.

Comment: Twelve commenters suggested that the "Amount Requested" evaluation criterion listed in § 4284.513 be removed.

Response: Agree. The evaluation criterion has been eliminated.

Comment: One commenter expressed concern that the RCDG Program does not provide incentives and support for cooperatives and centers who work together.

Response: No change. The regulations do provide incentives for cooperatives to work together and for centers to help cooperatives do this. An applicant for an RCDG will receive more points in the Linkages evaluation criteria listed in § 4284.513 if it demonstrates the ability to create horizontal and vertical linkages among businesses. The regulation does not discuss linkages among centers because they currently exist and are highly developed.

Comment: One commenter requested that funds from other grant programs be allowed as matching funds.

Response: No change. 7 CFR 3019.23(a)(5) states that matching funds shall not be "paid by the Federal Government under another award except where authorized by Federal statute to be used for cost sharing or matching."

List of Subjects

7 CFR Part 1951

Grant programs—Housing and community development, Reporting requirements, Rural development.

7 CFR Part 4284

Agricultural commodities, Agriculture innovation centers, Agricultural marketing research, Business and Industry, Grant programs—Housing and community development, Rural areas, Rural development, Value-added.

■ Accordingly, chapters XVIII and XLII, title 7, of the Code of Federal Regulations are amended as follows:

PART 1951—SERVICING AND COLLECTIONS

■ 1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

■ 2. Revise § 1951.201 to read as follows:

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations and procedures for servicing the following programs: Water and Waste Disposal System loans and grants, Community Facility loans and grants, Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Direct Business loans; Economic Opportunity Cooperative loans; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants; and, in part 4284 of this title, Rural and Cooperative Development Grants, Value-Added Producer Grants and Agriculture Innovation Center Grants. Rural Development State Offices act on behalf of the Rural Utilities Service, the Rural Business-Cooperative Service and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this Subpart will not be made applicable to such loans.

PART 4284—GRANTS

■ 3. The authority citation for part 4284 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C 1932(e).

Subpart G also issued under 7 U.S.C 1926(a)(11).

Subpart J also issued under 7 U.S.C 1621 note.

Subpart K also issued under 7 U.S.C. 1621 note.

■ 4. Subpart A of part 4284, consisting of §§ 4284.1 through 4284.100 is added to read as follows:

Subpart A—General Requirements for Cooperative Services Grant Programs

Sec.

§ 4284.1 Purpose.

The purpose of this subpart is to set forth definitions and requirements which are common to all grant programs set forth in this part administered by Cooperative Services within the Rural Business-Cooperative Service (RBS). Programs administered by the Business Programs within RBS are not affected by this subpart.

§ 4284.2 Policy.

It is the policy of Cooperative Services to administer grant programs as uniformly as possible to minimize unnecessary inconsistencies in the administration of the grant programs provided for in this part. The specific provisions or definitions provided in the subparts that are specific to Cooperative Services are supplemental to these general provisions. Where a specific program provision is expressly different from what is provided in this subpart, the program specific subpart shall prevail.

§ 4284.3 Definitions.

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Producer—Persons or entities, including farmers, ranchers, loggers, agricultural harvesters and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which Value-Added is to accrue as a result of the project. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Agriculture Producer Group—An organization that represents Independent Producers, whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and seafood products.

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Emerging Market—A new or developing market for the applicant, which the applicant has not traditionally supplied.

Farmer or Rancher Cooperative—A farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, individuals or entities (including for profit and not for profit corporations, LLCs, partnerships or LLPs), where the entities are solely owned or controlled by Agricultural Producers who own a majority ownership interest in the agricultural product that is produced. An independent producer can also be a steering committee composed of independent producers in the process of organizing an association to operate a Value-Added venture that will be owned and controlled by the independent producers supplying the agricultural product to the market. Independent Producers must produce and own the agricultural product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers.

Majority-Controlled Producer-Based Business Venture—A venture where more than 50% of the ownership and control is held by Independent Producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, matching funds must be at least equal to the grant amount. Unless otherwise provided, in-kind contributions that conform to the provisions of 7 CFR 3015.50 and 7 CFR 3019.23, as applicable, can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds shall have been funded prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds. Funds used for an ineligible purpose will not be considered matching funds.

National Office—USDA RBS headquarters in Washington, DC.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

RFP—Request for Proposals.

Rural and rural area—includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in each state.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state, differentiated production or marketing, as demonstrated in a business plan, or Product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

§ 4284.4 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11 and subpart B of part 1900. If the Agency makes a determination that a decision is not appealable, a participant may request that it be reviewed by the Director of the National Appeals Division.

§ 4284.5 [Reserved]

§ 4284.6 Applicant eligibility.

An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any assistance until the judgment is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgment.

§ 4284.7 Electronic submission.

Applicants and grant awardees are encouraged, but not required, to submit applications and reports in electronic form as prescribed in requests for proposals issued by USDA and in the applicable grant agreements.

§ 4284.8 Grant approval and obligation of funds.

The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

> The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR part 4284 and 7 CFR parts 3015, 3016, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions.

§ 4284.9 Grant disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. The Agency may limit the frequency in which a Request for Advance or Reimbursement may be submitted.

§ 4284.10 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the date of grant approval;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have a least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States;

(g) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(h) Purchase, rent or install Fixed Equipment;

(i) Pay for the repair of privately owned vehicles; or

(j) Fund research and development.

§ 4284.11 Award requirements.

In addition to specific grant requirements, all approved applicants will be required to do the following:

(a) Enter into a grant agreement with USDA in form and substance similar to the form of agreement as may be published within or as an appendix to the applicable RFP;

(b) Submit a feasibility study and business plan showing the viability of the venture, if any Federal grant and matching funds are to be used as working capital;

(c) Use "Request for Advance or Reimbursement" to request advances or reimbursements, as applicable, but not more frequently than once a month;

(d) Maintain a financial management system that is acceptable to the Agency; and

(e) Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

§ 4284.12 Reporting requirements.

Grantees must submit the following to USDA:

(a) A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

(b) Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (a) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

(c) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 30 days of the completion of the project.

§ 4284.13 Confidentiality of reports.

All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

§ 4284.15 Performance reviews.

(a) USDA will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(b) USDA may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, but nevertheless fund the remainder of a request for an advance or reimbursement, as applicable, where USDA has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis; or

(3) Such other cause as USDA identifies in writing to the grantee (including but not limited to the use of Federal grant funds for ineligible purposes).

§ 4284.16 Other considerations.

(a) *Environmental review.* All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333, provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(b) *Civil rights.* All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. This program will also be administered in accordance with all other applicable civil rights law.

(c) *Other USDA regulations.* The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

§ 4284.17 Member delegate clause.

No Member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a Member of Congress.

§ 4284.18 Audit requirements.

Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

§ 4284.19 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination and recovery of grant funds.

§§ 4284.20—4284.99 [Reserved]

§ 4284.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0045.

■ 5. Subpart F of part 4284, consisting of §§ 4284.501 through 4284.600 is revised to read as follows:

Subpart F—Rural Cooperative Development Grants

Sec.

§ 4284.501 Purpose.

This subpart outlines the Agency's polices and procedures for making grants for cooperative development in rural areas.

§ 4284.502 Policy.

Rural cooperative development grants will be used to facilitate the creation or retention of jobs in rural areas through the development of new rural cooperatives, Value-Added processing and rural businesses.

§ 4284.503 Program administration.

The rural cooperative development grant program is administered by Cooperative Services within the Agency.

§ 4284.504 Definitions.

Center—The entity established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee.

Cooperative development—The startup, expansion or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that create Value-Added to farm products through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services and advisory services. Operational improvement includes making the cooperative more efficient or better managed.

1994 Institution—means a college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). Contact the Agency for a list of currently eligible colleges.

Project—A planned undertaking by a Center that utilizes the funds provided to it to promote economic development in rural areas through the creation and enhancement of cooperatives.

§ 4284.505–4284.506 [Reserved]

§ 4284.507 Eligibility for grant assistance.

Grants may be made to Nonprofit corporations and institutions of higher

education. Grants may not be made to Public bodies.

§ 4284.508 Use of grant funds.

Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Matching funds contributed by the applicant may include a loan from another federal source. Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

(a) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(b) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(c) Providing training and instruction for the purpose of cooperative development.

(d) Providing loans and grants for the purpose of cooperative development in accordance with the subpart.

(e) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

§ 4284.509 Limitations on grants.

Grants made pursuant to this subpart shall be for one year or less.

§ 4284.510 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one hard copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) "Application for Federal Assistance"

(2) "Budget Information—Non-Construction Programs"

(3) "Assurances—Non-Construction Programs"

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) Executive Summary. A summary of the proposal should briefly describe the Center, including goals and tasks to be accomplished, the amount requested, how the work will be performed and whether organizational staff, consultants or contractors will be used.

(4) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) Proposal Narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFP, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the Project. This section must include the following:

(A) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(B) A provision that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(C) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services.

(D) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(iv) Work Plan. Applicants must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

(v) Performance Evaluation Criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Undertakings. The applicant must expressly undertake to do the following:

(A) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(B) Make arrangements for the activities by the nonprofit institution operating the Center to be monitored and evaluated; and

(C) Provide an accounting for the money received by the grantee under this subpart.

(vii) Delivery of Cooperative development assistance. The applicant must describe its previous accomplishments and outcomes in Cooperative development activities and/or its potential for effective delivery of Cooperative development services to rural areas. The applicant should also describe the type(s) of assistance to be provided, the expected impacts of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of its Cooperative development strategy and focus to other areas of the U.S.

(viii) Qualifications of Personnel. Applicants must describe the qualifications of personnel expected to perform key center tasks, and whether these personnel are to be full/part-time Center employees or contract personnel. Those personnel having a track record of positive solutions for complex cooperative development or marketing problems, or those with a record of conducting feasibility studies that later proved to be accurate, business planning, marketing analysis, or other activities relevant to the Center's success should be highlighted.

(ix) Support and commitments. Applicants must describe the level of support and commitment in the community for the proposed Center and the services it would provide. Plans for coordinating with other developmental organizations in the proposed service area, or with state and local government institutions should be included. Letters supporting cooperation and coordination from potential local customers should be provided.

(x) Future support. Applicants should describe their vision for Center operations beyond the first year, including issues such as sources and uses of alternative funding; reliance on Federal, state, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center.

(xi) Evaluation criteria. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form.

(6) Verification of Matching Funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) Certification. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for advance.

§ 4284.511 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.512 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, the Agency will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

§ 4284.513 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. Preference will be given to items in paragraphs (a) through (f) of this section. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Administrative capabilities.* The application will be evaluated to determine whether the subject Center has a track record of administering a nationally coordinated, regional or state-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

(b) *Technical assistance and other services.* The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance in Rural areas.

(c) *Economic development.* The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas.

(d) *Linkages.* The Agency will evaluate the applicant's demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets.

(e) *Commitment.* The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States.

(f) *Matching Funds.* All applicants must demonstrate Matching Funds equal to at least 25 percent (5 percent for 1994 Institutions) of the grant amount requested. Applications exceeding these minimum commitment levels will receive more points.

(g) *Delivery.* The Agency will evaluate whether the Center has a track record in providing technical assistance in rural areas and accomplishing effective outcomes in cooperative development. The Center's potential for delivering effective cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center's cooperative development strategy and focus to other States will also be assessed.

(h) *Work Plan/Budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non Federal funding commitments.

(i) *Qualifications of those Performing the Tasks.* The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex Cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success.

(j) *Local support.* Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area and coordination with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center's intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent.

(k) *Future support.* Applications that demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§ 4284.514 Grant closing.

(a) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement.* The Agency and the grantee must enter into the Agency's "Agriculture Innovation Center Grant Agreement" prior to the advance of funds.

§§ 4284.515–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0006 in accordance with the Paperwork Reduction Act of 1995.

■ 6. Subpart J of part 4284, consisting of §§ 4284.901 through 4284.1000 is added to read as follows:

Subpart J—Value-Added Producer Grants

§ 4284.901 Purpose.

This subpart implements the Value-Added agricultural product market development grant program (Value-Added Producer Grants) administered by the Rural Business-Cooperative Service whereby grants are made to enable producers to develop businesses that produce and market Value-Added agricultural products.

§ 4284.902 Policy.

It is the policy of the Secretary of Agriculture to fund a broad diversity of projects that help increase the agricultural producers' customer base and share of the food and agricultural system profit.

§ 4284.903 Program Administration.

The Value-Added Producer Grant program is administered by Cooperative Services within the Agency.

§ 4284.904 Definitions.

Planning Grants—Grants to facilitate the development of a defined program of economic activities to determine the viability of a potential Value-Added venture, including feasibility studies, marketing strategies, business plans and legal evaluations.

Working Capital Grants—Grants to provide funds to operate ventures and pay the normal expenses of the venture that are eligible uses of grant funds.

§§ 4284.905–4284.906 [Reserved]

§ 4284.907 Eligibility for grant assistance.

(a) The proposed project must evidence a high likelihood of creating Value-Added for an Agricultural Product.

(b) Independent Producers, Agricultural producer groups, Farmer or Rancher cooperatives and Majority-Controlled Producer-Based Business Ventures, are eligible for grants under this subpart.

(c) An applicant that is a Farmer or Rancher cooperative, an Agriculture producer group or a Majority-Controlled Producer-Based Business Venture must be entering into an Emerging Market as a result of the proposed project. An applicant that is an Independent Producer does not have to be entering into an Emerging Market.

(d) No project may be the subject of more than one Planning Grant or more than one Working Capital Grant under this subpart. The same project may, however, be awarded one Planning Grant and subsequently apply for and receive a Working Capital Grant.

(e) Not more than one project per funding cycle per applicant may receive grant funding under this subpart.

§ 4284.908 Use of grant and matching funds.

(a) An application may be for either a Planning Grant or a Working Capital Grant, but not both.

(b) Grant funds may be used to pay up to 50 percent of the costs for carrying out relevant projects. Matching funds must be provided for the balance of costs.

(c) Matching funds may only be used for the same purposes allowed for grant funds.

(d) Planning Grant funds may be used to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a Value-Added producer. These uses include, but are not limited to, the following:

(1) Conduct, or hire a qualified consultant to conduct, a feasibility analysis of the proposed value added project to help determine the potential success of the project;

(2) Develop, or hire a qualified consultant to develop, a business operations plan that provides comprehensive detail on the management, planning and other operational aspects of the proposed project; and

(3) Develop, or hire a qualified consultant to develop, a marketing plan for the proposed Value-Added product(s) including the identification of a market window, potential buyers, a description of the distribution system and possible promotional campaigns;

(e) Working Capital Grant funds may be used to provide capital to establish alliances or business ventures that allow the producer of the Value-Added agricultural product to better compete in domestic or international markets. These uses include, but are not limited to, the following:

(1) Establish a working capital account to fund operations prior to obtaining sufficient cash flow from operations;

(2) Hire counsel to provide legal advice and to draft organizational and other legal documents related to the proposed venture;

(3) Hire a Certified Public Accountant or other qualified individual to design an accounting system for the proposed venture; and

(4) Pay salaries, utilities and other operating costs such as inventory financing, the purchase of office equipment, computers and supplies and finance other related activities.

§ 4284.909 Limitations on use of funds and awards.

(a) In addition to the limitations provided in 7 CFR subpart A, neither grant nor matching funds may be used to fund architectural or engineering design work, or other planning work, for a physical facility;

(b) The total amount provided to any Value-Added project shall not exceed $500,000;

(c) The aggregate amount of awards to majority controlled producer-based business ventures may not exceed ten percent of the total funds obligated under this subpart during any fiscal year.

§ 4284.910 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more RFPs. Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) "Application for Federal Assistance."

(2) "Budget Information—Non-Construction Programs."

(3) "Assurances—Non-Construction Programs."

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) Executive Summary. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project. In this section the applicant must clearly state whether the application is for a Planning Grant or a Working Capital Grant and the amount requested.

(4) Eligibility. The narrative must include a detailed discussion of how the applicant meets the eligibility requirements.

(5) Proposal Narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information Sheet. A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the Project. A clear statement of the ultimate goals of the project. There must be an explanation of how a market will be expanded and the degree to which incremental revenue will accrue to the benefit of the agricultural producer(s).

(iv) Work Plan. The narrative must contain a description of the project and set forth the tasks involved in reasonable detail.

(v) Performance Evaluation Criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Proposal Evaluation Criteria. Each of the proposal evaluation criteria referenced in the RFP must be addressed, specifically and individually, in narrative form.

(6) Verification of Matching Funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) Certification. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for reimbursement.

§ 4284.911 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the RFP to allow for an informed review. Failure to address any of the required evaluation criteria will disqualify the proposal. Submissions which do not pass the initial screening may be returned to the Applicant. If the submission deadline has not expired and time permits, returned applications may be revised and re-submitted.

§ 4284.912 Evaluation process.

(a) Applications will be evaluated by agricultural economists or other technical experts appointed by the Agency.

(b) After all proposals have been evaluated and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (*e.g.*, to ensure geographic distribution, distribution of a commodity or accomplish presidential initiatives.) The maximum number of points that can be added to an application cannot exceed ten percent of the total points of the original score.

(d) After giving effect to the Administrator's point awards, applications will be funded in rank order until all available funds have been obligated.

(e) In the event an insufficient number of eligible applications are received in response to a given RFP, time permitting, subsequent rounds of competition will be initiated by publishing subsequent RFPs.

(f) Unless a proposal is withdrawn, eligible but unfunded proposals from preceding competitions in a given fiscal year will be considered for funding in subsequent competitions in the same fiscal year.

§ 4284.913 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate proposals submitted under this subpart. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Planning Grants.* (1) Nature of the proposed venture. Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Points will be awarded based on the greatest expansion of markets and increased returns to producers. Evaluators may rely on their own knowledge and examples of similar ventures described in the proposal to form conclusions regarding this criterion.

(2) Qualifications of those doing work. Proposals will be reviewed for whether the personnel who are responsible for doing proposed tasks, including those hired to do studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well.

(3) Project leadership. The leadership abilities of individuals who are proposing the venture will be evaluated as to whether they are sufficient to support a conclusion of likely project success. Credit may be given for leadership evidenced in community or volunteer efforts.

(4) Commitments and support. Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance.

(5) Work plan/Budget. The work plan will be reviewed to determine whether it provides specific and detailed planning task descriptions that will accomplish the project's goals. The budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points.

(6) Amount requested. Points will be awarded based on the size of the grant request. Generally, requests for lower amounts will receive a higher score for this criterion than higher requests. The points to be awarded and request ranges will be established in the applicable RFP.

(7) Project cost per owner-producer. This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. Points to be

awarded will be established in the applicable RFP.

(8) Presidential initiatives. Points may be awarded for proposals that focus on Presidential initiatives. Descriptions of these initiatives and the points to be awarded will be established in the applicable RFP.

(b) *Working Capital Grants.* (1) Business viability. Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the venture and the efficiency of operations.

(2) Customer base/increased returns. Proposals that demonstrate strong growth in a market or customer base and greater Value-Added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized Value-Added returns.

(3) Commitments and support. Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance.

(4) Management team/work force. The education and capabilities of project managers and those who will operate the venture must reflect the skills and experience necessary to effect project success. The availability and quality of the labor force needed to operate the venture will also be evaluated. Proposals that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

(5) Work plan/Budget. The work plan will be reviewed for whether it provides specific and detailed planning task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the venture's operations and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points.

(6) Amount requested. Points will be awarded based on the size of the grant request. Requests for lower amounts will receive a higher score for this criterion than higher requests. The points to be awarded and request ranges will be established in the applicable RFP.

(7) Project cost per owner-producer. This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. Points to be awarded will be established in the applicable RFP.

(8) Presidential initiatives. Points may be awarded for proposals that focus on Presidential initiatives. Descriptions of these initiatives and the points to be awarded will be established in the applicable RFP.

§ 4284.914 Grant closing.

(a) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement.* The Agency and the grantee must sign the Agency's "Value-Added Producer Grant Agreement" prior to the advance of funds.

§§ 4284.915–999 [Reserved]

§ 4284.1000 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0039 in accordance with the Paperwork Reduction Act of 1995.

■ 7. Subpart K of part 4284, consisting of §§ 4284.1001 through 4284.1100 is added to read as follows:

Subpart K—Agriculture Innovation Demonstration Centers

Sec.

§ 4284.1001 Purpose.

This subpart implements a demonstration program administered by the Rural Business-Cooperative Service whereby grants are made to innovation centers responsible for providing technical and business development assistance to agricultural producers seeking to engage in the marketing or the production of Value-Added products.

§ 4284.1002 Policy.

It is the policy of the Secretary of Agriculture to fund Centers which evidence broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community. It is also the policy of the Secretary, using the research and technical services of the U.S. Department of Agriculture, to assist the grantees in establishing Centers. This program is not intended to fund scientific research.

§ 4284.1003 Program administration.

The Agriculture Innovation Demonstration Center program is administered by Cooperative Services within the Agency.

§ 4284.1004 Definitions.

Board of Directors—The group of individuals that govern the Center.

Center—The Agriculture Innovation Center to be established and operated by the grantees. It may or may not be an independent legal entity, but it must be independently governed in accordance with the requirements of this subpart.

Producer Services—Services to be provided by the Centers to agricultural producers. Producer Services consist of the following types of services:

(1) Technical assistance, consisting of engineering services, applied research, Scale Production Assessments, and similar services, to enable the agricultural producers to establish businesses to produce Value-Added agricultural commodities or products;

(2) Assistance in marketing, market development and business planning, including advisory services with respect to leveraging capital assets; and

(3) Organizational, outreach and development assistance to increase the viability, growth and sustainability of businesses that produce Value-Added agricultural commodities or products.

Qualified Board of Directors—A Board of Directors that includes representatives from each of the following groups:

(1) The two general agricultural organizations with the greatest number of members in the State in which the Center is located;

(2) The State department of agriculture, or equivalent, of the State in which the Center is located; and

(3) Entities representing the four highest grossing commodities produced in the State in which the Center is located, as determined on the basis of annual gross cash sales.

Scale Production Assessments—Studies that analyze facilities, including processing facilities, for potential Value-added activities in order to determine the size that optimizes construction and other cost efficiencies.

§ 4284.1005–4284.1006 [Reserved]

§ 4284.1007 Eligibility for grant assistance.

Non-profit and for-profit corporations, institutions of higher learning and other entities, including a consortium where a lead entity has been designated and agrees to act as funding agent, that meet the following requirements are eligible for grant assistance:

(a) The entity—

(1) Has provided services similar to those listed for Producer Services; or

(2) Demonstrates the capability of providing Producer Services;

(b) The application includes a plan that meets the requirements of § 4284.1010(c)(5)(iv) that also outlines—

(1) The support for the entity in the agricultural community;

(2) The technical and other expertise of the entity; and

(3) The goals of the entity for increasing and improving the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products;

(c) The entity demonstrates that adequate resources (in cash or in kind) are available, or have been committed to be made available to the entity, to increase and improve the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products; and

(d) The proposed Center has a Qualified Board of Directors.

§ 4284.1008 Use of grant funds.

Grant funds may be used to assist eligible recipients in establishing Centers that provide Producer Services and may only be used to support operations of the Center that directly relate to providing Producer Services. Grant funds may be used for the following purposes, subject to the limitations set forth in § 4284.10:

(a) Consulting services for legal, accounting and technical services to be used by the grantee in establishing and operating a Center;

(b) Hiring of employees, at the discretion of the Qualified Board of Directors;

(c) The making of matching grants to agricultural producers, individually not to exceed $5,000, where the aggregate amount of all such matching grants made by the grantee does not exceed $50,000;

(d) Applied research;

(e) Legal services; and

(f) Such other related purposes as the Agency may announce in the RFP.

§ 4284.1009 Limitations on awards.

The maximum grant award for an agriculture innovation center shall be in an amount that does not exceed the lesser of $1,000,000 or twice the dollar amount of the resources (in cash or in kind) that the eligible entity demonstrates are available, or have been committed to be made available, to the eligible entity.

§ 4284.1010 Application processing.

(a) *Applications.* USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) *Required forms.* The following forms must be completed, signed and submitted as part of the application package. Other OMB approved forms may be required. This will be published in the applicable RFP.

(1) "Application for Federal Assistance."

(2) "Budget Information—Non-Construction Programs."

(3) "Assurances—Non-Construction Programs."

(c) *Proposal.* Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) Executive Summary. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project and the amount requested.

(4) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) Proposal Narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information Sheet. A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the Project. The first part of this section should list each Producer Service to be offered by the Center. The second part of this section should list one or more specific goals relating to increasing and improving the ability of identified local agricultural producers to develop a market or process for Value-Added agricultural commodities or products.

(iv) Work Plan. Actions that must be taken in order for the Producer Services to be available from the Center. Each action listed should include a target date by which it will be completed. General start up tasks should be listed, followed by specific tasks listed for each Producer Service to be offered, as well as tasks associated with the start of operations. The tasks associated with the start of operations should include a focused marketing and delivery plan directed to the local agricultural producers that were identified in paragraph (c)(5)(iii) of this section. The actions to be taken should include steps for identifying customers, acquiring personnel and contracting for services to the Center, including arrangements for strategic alliances.

(v) Performance Evaluation Criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Agricultural Community Support. Evidence of support from the local agricultural community should be included in this section. Letters in support should reflect that the writer is familiar with the provisions of the Plan for the Center, including the stated goals.

Evidence of support can take the form of making employees available to the

Center, service as a board member and other in-kind contributions.

(vii) Strategic Coordination and Alliances. Describe arrangements in place or planned with end users (processing and distribution companies and regional grocers) as well as arrangements with entities having technical research capabilities, broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community.

(viii) Capacity. Evidence of the ability of the grantee(s) to successfully establish and operate a Center. A description of the grantee's track record in providing services similar to those listed for Producer Services or evidence that the entity has the capability to provide Producer Services. Resumes of key personnel should be included in this section. Past successes should be described in detail, with a focus on lessons learned, best practices, familiarity with producer problems in Value-Added ventures, and how these barriers are best overcome should be elaborated on in this section. For every challenge identified, the applicant should demonstrate how they are addressed in the Work Plan (*see* paragraph (c)(5)(iv) of this section). All successes should include a monetary estimate of the Value-Added achieved.

(ix) Legal structure. Provide a description of the legal relationship between the grantee(s) and the proposed Center. If the Center is to be an independent corporate entity, provide copies of the corporate charter, bylaws and other relevant organizational documents. Describe how funds for the Center will be handled and include copies of the agreements documenting the legal relationships between the Center and related parties. If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined.

(x) Evaluation Criteria. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form. Supporting documentation, as applicable, should be included in this section, or a cross reference to other sections in the application should be provided, as applicable.

(xi) Verification of Adequate Resources. Present a budget to support the work plan showing sources and uses of funds during the start up period prior to the start of operations and for the first year of full operations. Present a copy of a bank statement evidencing sources of funds equal to amounts required in excess of the grant requested, or, in the alternative, a copy of confirmed funding commitments from credible sources such that USDA is satisfied that the Center has adequate resources to complete a full year of operation. Include information sufficient to facilitate verification by USDA of all representations.

(xii) Certification of Adequate Resources Applicants must certify that non-Federal funds identified in the budget pursuant to paragraph (c)(5)(xi) of this section will be available and funded commensurately with grant funds.

§ 4284.1011 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further, and may be returned to the applicant. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.1012 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (*e.g.*, to ensure geographic distribution, put emphasis on a specific commodity, or to accomplish presidential initiatives.) The maximum number of points that can be added to an application under this paragraph cannot exceed ten percent of the total points the application originally scored.

(d) After giving effect to the Administrator's point awards, applications will be funded in rank order until all available funds have been obligated.

§ 4284.1013 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Ability to Deliver.* The application will be evaluated as to whether it evidences unique abilities to deliver Producer Services so as to create sustainable Value-Added ventures. Abilities that are transferable to a wide range of agricultural Value-Added commodities are preferred over highly specialized skills. Strong skills must be accompanied by a credible and thoughtful plan.

(b) *Successful Track Record.* The applicant's track record in achieving Value-Added successes.

(c) *Work Plan/Budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the strength of non-Federal funding commitments.

(d) *Qualifications of personnel.* Proposals will be reviewed for whether the key personnel who are to be responsible for performing the proposed tasks have the necessary qualifications and whether they have a track record of performing activities similar to those being proposed. If a consultant or others are to be hired, points may be awarded for consultants only if the proposal includes evidence of their availability and commitment as well. Proposals using in-house employees with strong track records in innovative activities will receive higher points relative to proposals that out-source expertise.

(e) *Local support.* Proposed Centers must show local support and coordination with other developmental organizations in the proposed service area and with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other rural amenities. Proposed Centers that show strong support from potential beneficiaries and coordination with other developmental organizations will receive more points than those not evidencing such support.

(f) *Future support.* Applicants that can demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§ 4284.1014 Grant closing.

(a) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement.* The Agency and the grantee must enter into an "Agriculture Innovation Center Grant Agreement" prior to the advance of funds.

§§ 4284.1015–4284.1099 [Reserved]

§ 4284.1100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0045.

Dated: April 21, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–9671 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–XY–P

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims for Domestic Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for indemnity claims as set forth in the *Domestic Mail Manual* (DMM) S010, Indemnity Claims, and related provisions of DMM S913, Insured Mail, and DMM S921, Collect on Delivery (COD) Mail. Other than the changes concerning time periods for filing claims and retention periods for undelivered accountable mail, the changes clarify existing DMM provisions or codify, in the DMM, policies not currently set forth in that manual.

DATES: May 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jim Pretlow, 202–268–5389

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on December 6, 2002 [Vol. 67, No. 235, pages 72626–72629], the Postal Service proposed to revise the procedures in the *Domestic Mail Manual* (DMM) for filing indemnity claims, to clarify the standards for payment of claims, and to incorporate policies not currently set forth in the DMM. (**Note:** Two minor procedural changes contained in the proposed rule have been eliminated in the final rule: elimination of local adjudication and the ability to enter claims via the web. Also, the word "sender" has been changed to "mailer"). One comment was received. After thorough consideration of the issues raised in this comment, the Postal Service adopts the proposed revisions with the modifications discussed below.

The revisions to the procedures for filing claims are made in conjunction with the redesign of the Postal Service's claim system and are intended to facilitate the provision of more timely decisions to Postal Service customers' claims. For example, customers are permitted to file claims sooner in some circumstances, thereby allowing decisions to be made closer to the mailing date. In addition, either the mailer or the addressee, whoever is in possession of the original mailing receipt, will be permitted to file a claim for the complete loss of a numbered Insured Mail, Registered Mail, collect on delivery (COD), or Express Mail article. Under past rules, only the mailer was permitted to submit such claims. The revisions do not change the procedures for unnumbered Insured Mail (articles insured for $50 or less). As before, only the mailer will be allowed to file a claim for the complete loss of an unnumbered Insured Mail article.

The revisions also provide further clarification of what is acceptable evidence of value, codifying current policies into the DMM. Claims for damage require that the article and mailing container, including any wrapping, packaging, and any other contents that were received must be presented by the addressee to the Postal Service for inspection regardless of whether the mailer or addressee files the claim.

The new revisions will also:

(1) Clarify situations under which indemnity will not be paid, ensuring that current policies are codified in the DMM.

(2) Provide that the original sales receipt from a Postal Service retail terminal, listing the mailing receipt number and insurance amount, is acceptable evidence of insurance when the original mailing receipt is not available.

(3) Provide that initial appeals must be sent directly to Claims Appeals at the St. Louis Accounting Service Center (ASC), except appeals for unnumbered Insured Mail articles, which must be mailed to the Post Office™ where the claim was filed.

(4) Clarify the time limit in which a customer may forward a final appeal to the Consumer Advocate at Headquarters.

(5) Clarify that a mailer of a COD article may not stipulate "Cash Only."

Discussion of Comments

A summary of the comments and our analysis of each follows:

1. S010.2.2. The commenter raised two issues regarding the changes in the time for filing a claim for a lost or damaged COD article. First, the commenter stated that the requirement for waiting 45 days before filing a claim for a lost COD article is excessive compared to the timeframe for mail receiving other special services.

The Postal Service does not believe the proposed rule should be changed. Since handling procedures differ depending on the special service provided, it is inappropriate to establish uniform limits for filing claims. A COD article may be held at a delivery unit for up to 30 days before being returned to the mailer if unclaimed by the addressee (see DMM, D042.1.7.f). It should also be noted, the Postal Service proposal reduced the current waiting period for filing a claim for a lost COD article from 60 days to 45 days. As for other classes of mail or service, the new time frames took into consideration that the holding period is 5 days for Express Mail items and 15 days for Insured Mail or Registered Mail items.

Secondly, the commenter objected to the new requirement that a customer must file a claim no later than 45 days from the date of mailing when the contents of an article are damaged or missing from the container. The commenter states that if the COD article were not delivered until the 45th day after mailing, the mailer could not file a damage claim because the 45 days would have already passed.

The Postal Service believes there is merit in the concern raised. Accordingly, the Postal Service will revise the proposed rule to allow customers to submit damage claims no later than 60 days from the mailing date.

2. S010.2.5.a. The commenter states that the requirement for the original postmarked mailing receipt is inappropriate in that not all receipts will be postmarked. The Postal Service agrees that it erred in that Express Mail and point of service (POS) retail

terminal imprinted receipts do not require a postmark. Therefore, the original postmarked receipt will be required for Insured Mail, Registered Mail, and COD items only. This is due to the fact that anyone can pick up a receipt in a Post Office lobby for Insured Mail or Registered Mail items and get a COD tag over the counter.

The commenter also states that the requirement for the original receipt is inappropriate in the case of Registered Mail or Express Mail items when the Postal Service has a copy of the mailing receipt, and can validate the claim because the mailer has provided the article number and date of mailing either from a photocopy or from other records.

The Postal Service does not believe the rules should be amended to accommodate this suggestion. The requirement for the original receipt is to ensure that the proper party is indemnified. It is the customer's responsibility to provide the proof of insurance evidenced by an original mailing receipt. Moreover, under existing procedures, mailers utilizing these services are also permitted to submit the mailing wrapper as evidence of insurance.

3. S010.2.6.b. The commenter states that the addition of the phrase, "For items valued up to $100," appears to be a major change. The Postal Service maintains this revision does not represent a change in policy but merely codifies current policy. Acceptance of a customer's statement of value, in lieu of actual evidence of value, creates an opportunity for abuse, particularly when permitted for higher value items.

The commenter also suggests that Postal Service retail clerks should inform mailers what evidence will be needed to support claims. The Postal Service trains sales and services associates to be able to provide this information to customers. In addition, the Postal Service has taken steps to make this information available through a wide variety of public sources. This information is printed on the back of the mailing receipts. Customers may call our toll-free number for information at 1–800–ASK–USPS. The same information is also contained in the DMM, which can be accessed through *http://pe.usps.gov.*

The commenter also asserts that eliminating reimbursement of the cost of labor from handmade items is too broad. The Postal Service offers coverage for the value of goods, based on the established value in the marketplace, whether or not those goods are handmade. However, where the item mailed is not commonly sold (*e.g.* a hobby, craft, or similar handmade item), there is no established value. In that case, the Postal Service provides compensation for the costs of the materials used, but not for the time used in making it. The Postal Service will amend the proposed rule to clarify this policy.

4. S010.2.6.h. The commenter requests clarification of this proposed rule referring to a printout of a transaction that is made on the Internet. This comment pertains to the proposal for the provision of evidence of value for goods obtained through Internet transactions. These transactions are typically conducted through a Web-based payment network that offers payment services through a stored value account, commonly used to buy or sell items at online auctions.

For transactions involving the use of a credit card online or payment by check, a copy of a credit card statement or canceled check could serve as evidence of value. The Postal Service will amend the proposed rule to clarify this policy.

5. S010.2.14.r. The commenter states that this section appears to require the use of Registered Mail service for obtaining insurance on negotiable items, currency, or bullion, which would be a change in current policy.

Although the Postal Service generally recommends that customers send these items as Registered Mail items, it did not intend to eliminate the option of mailing them as Insured Mail items. Accordingly, in order to avoid confusion, the Postal Service will withdraw this proposed change to the DMM.

6. S010.2.14.ae. The commenter objects to the proposed regulation that event or transportation tickets, received after the event, are not insured when there is a provable loss because of the delay and the article was mailed using Express Mail service. With Express Mail service's guaranteed delivery time, if the article is not delivered by that time, and a provable loss results from the delay in delivery, then, the commenter argues, the loss should be covered by Postal Service insurance.

The commenter raised a valid concern and the final rule incorporates an exception for Express Mail service.

7. S010.2.14.af. The commenter objects to this revision regarding nonpayable claims for software installed onto computers that have been lost or damaged. The commenter states that if one paid to have software loaded on the lost or damaged computer, then the insurance should cover the cost of having the same software installed on a replacement computer. In addition, if software, recorded on compact disc or diskette(s), enclosed with the computer when shipped is also lost or damaged, it should be covered by the insurance purchased.

The Postal Service does not believe a change in the rule is warranted. Software loaded onto personal computers is licensed for use to the purchaser. Whether on compact disc or diskette(s), the software provides the purchaser the ability to reinstall the software on a computer. Software is generally designed to self load when the appropriate drive is selected with limited prompting or assistance from an individual. Also, a replacement personal computer typically will include replacement software. Software on a medium, such as compact discs or diskettes, recognized as a means to load the software onto a computer, would be covered for loss or damage dependent upon the amount of insurance coverage purchased at the time of mailing.

8. S010.2.14.ag. The commenter observes that this proposed rule does not comply with the provisions stated in S921.1.5, Fee and Postage, in that it states that if the mailer does not receive the personal check that was mailed by the delivery Post Office, it will be the mailer's responsibility to obtain a replacement check from the addressee. The fees for COD service include insurance against failure to receive a postal money order or the recipient's check.

The Postal Service agrees that the proposed rule is in conflict with S921.1.5, and, therefore, the proposed rule is withdrawn.

9. S010.2.14.ai. The commenter states that the concept of personal time should be clarified.

The commenter previously raised this issue in item 3 and it was addressed by the Postal Service above.

10. S913.2.7. The commenter raises the same issue as identified in item 2 regarding the requirement that all mailing receipts have a postmark (round date).

The Postal Service does not believe the proposed rule should be changed. This revision relates to Insured Mail receipts, PS Form 3813, Receipt for Domestic Insured Mail Parcel, or PS Form 3813–P, Insured Mail Receipt. There is an area on each of these receipts annotated either "Postmark of Mailing Office," or "Postmark Here," that clearly indicates that a postmark (round date) or POS retail terminal imprint, which includes a date, is required. Because these Postal Service mailing receipts are readily available in retail lobbies, a postmark or POS retail terminal imprint is required in order to

provide validation that the special service was actually purchased.

Based on the reasons discussed above, the Postal Service hereby amends the following standards of the DMM, incorporated by reference into the *Code of Federal Regulations* (CFR). See 39 CFR Part 111.

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, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. The following sections of the *Domestic Mail Manual* (DMM) are revised as set forth below:

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

A claim may be filed by:

[Reletter current items a, b, c, and d as new items b, c, d, and e. Add new item a to read as follows:]

a. Only the mailer, for the complete loss of an unnumbered Insured Mail article.

[Revise new item b to read as follows:]

b. Either the mailer or addressee, who is in possession of the original mailing receipt, for the complete loss of a numbered Insured Mail, Registered Mail, COD, or Express Mail article.

* * * * *

2.2 When To File

[Revise 2.2 to read as follows:]

A customer should file a claim immediately, but no later than 60 days from the date of mailing, when the contents of an article are damaged or missing from the mailing container. For a lost article, a customer must file a claim within the time limits in the chart below.

Mail type or service	When to file (from mailing date)	
	No sooner than (in days)	No later than (in days)
Insured Mail	21	180
COD	45	180
Registered Mail	15	180
Registered COD	45	180
Express Mail	7	90
Express Mail COD	45	90
APO/FPO Insured (First-Class Mail, SAM, PAL, or COD)	45	180
APO/FPO Insured (Surface Only)	75	180

* * * * *

2.4 How To File

[Revise 2.4 to read as follows:]

A customer may file a claim by presenting evidence of insurance, evidence of value, proof of damage, and for unnumbered Insured Mail claims only, proof of loss. (Proof of loss is not required for numbered Insured Mail, Registered Mail, COD, or Express Mail claims.) If the article was mailed Express Mail COD or Registered Mail COD, the claimant must provide both the original COD receipt with either the Express Mail or the Registered Mail receipt. The customer must complete the applicable spaces on PS Form 1000.

2.5 Evidence of Insurance

For a claim involving Insured Mail, Registered Mail, COD, or Express Mail service, the customer must present any of the following evidence showing that the particular service was purchased:

* * * * *

[Revise item a to read as follows:]

a. The original mailing receipt issued at the time of mailing (Insured Mail, Registered Mail, and COD receipts must contain a USPS postmark). Reproduced copies are not acceptable.

* * * * *

[Insert item d to read as follows:]

d. The original sales receipt from the USPS listing the mailing receipt number and insurance amount, if the original mailing receipt is not available. Reproduced copies of the USPS sales receipt are not acceptable.

2.6 Evidence of Value

[Revise introductory text to read as follows:]

The customer, either the mailer or the addressee, must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. (Other evidence may be requested to help determine an accurate value.) Examples of acceptable evidence are:

* * * * *

Revise item a to read as follows:

a. Sales receipt, invoice or bill of sale, or statement of value from a reputable dealer.

[Revise item b to read as follows:]

b. For items valued up to $100, the customer's own statement describing the lost or damaged article and including the date and place of purchase, the amount paid, and whether the item was new or used (only if a sales receipt or invoice is not available). If the article mailed is a hobby, craft, or similar handmade item, the statement must include the cost of the materials used in making the item. The statement must describe the article in sufficient detail to determine whether the value claimed is accurate.

* * * * *

[Add new item g to read as follows:]

g. A copy of a canceled check, money order receipt, credit card statement, or other documentation indicating the amount paid. For Internet purchases, a copy of the front and back of the canceled check, money order, or a copy of the credit card billing statement is required.

[Add new item h to read as follows:]

h. For Internet transactions conducted through a Web-based payment network that offers payment services through a stored value account, provide a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction, description of item purchased, and assurance that the transaction status is completed. The

printout must clearly identify the Web-based payment network provider through which the Internet transaction was conducted.

2.7 Missing Contents

[Revise 2.7 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must present the mailing container, including any wrapping, packaging, and any contents that were received, to the USPS with the claim. Failure to do so will result in denial of the claim.

2.8 Damage

[Revise 2.8 to read as follows:]

If the addressee files the claim, the addressee must present the damaged article and mailing container, including any wrapping, packaging, and any other contents that were received, to the USPS for inspection. If the mailer files the claim, the St. Louis ASC will notify the addressee by letter to present the damaged article and mailing container, including any wrapping, packaging, and any other contents that were received, to the USPS for inspection. Failure to do so will result in denial of the claim.

2.9 Proof of Loss

[Revise 2.9 to read as follows:]

The mailer must provide proof of loss for unnumbered Insured Mail only. Proof of loss is not required for numbered Insured Mail, Registered Mail, COD, or Express Mail claims. The mailer must present written and signed documentation from the addressee (such as a letter) dated at least 21 days from the date of mailing, stating the addressee did not receive the article.

[Delete items a, b and c.]

2.10 Duplicate Claim

[Revise 2.10 to read as follows.]

A customer must file any duplicate claim no sooner than 30 days and no later than 60 days from the date the original claim was filed.

[Delete the table.]

* * * * *

2.14 Nonpayable Claims

[Revise introductory text to read as follows:]

Indemnity is not paid for Insured Mail, Registered Mail, COD, or Express Mail in these situations:

* * * * *

[Add items ac through ah to read as follows:]

ac. Mailer refuses to accept delivery of the parcel on return.

ad. Mail not bearing the complete names and addresses of the mailer and addressee, or is undeliverable as addressed to either the addressee or mailer.

ae. Event or transportation tickets (*e.g.*, concert, theater, sport, airline, bus, train, etc.) received after the event date. Such items are insured for loss, but not for delay or receipt after the event date for which they were purchased unless sent by Express Mail and the loss is attributable solely due to the failure to meet the guaranteed delivery standard under the terms and conditions for the Express Mail offering selected.

af. Software installed onto computers that have been lost or damaged.

ag. Damaged articles not claimed within the prescribed time limits set forth in *Postal Operations Manual* 146.3.

ah. Personal time used to make hobby, craft, or similar handmade items.

* * * * *

3.0 PAYMENT

* * * * *

3.3 Dual Claim

[*Revise 3.3 to read as follows:*]

If the mailer and the addressee both claim insurance and cannot agree on which one should receive the payment, any payment due is made to the mailer unless the claim has already been paid to the addressee upon presentation of the original mailing receipt.

* * * * *

4.0 ADJUDICATION

* * * * *

4.2 Appeal

[Revise the first sentence of 4.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal within 60 days of the date of the original decision. Except for an unnumbered Insured Mail article, the customer must send the appeal directly to Claims Appeals at the St. Louis ASC (*see* G043 for address). For an unnumbered Insured Mail article, the customer must send the appeal to the Post Office where the claim was filed. That Post Office forwards the appeal to the manager of Claims Appeals at the St. Louis ASC.

4.3 Final USPS Decision

[Revise 4.3 to read as follows:]

If the manager of Claims Appeals at the St. Louis ASC sustains the denial of a claim, the customer may submit an additional appeal within 60 days for final review and decision to the Consumer Advocate, USPS Headquarters (see G043 for address), who may waive the standards in S010 in favor of the customer.

* * * * *

[Delete 5.0. Sampling process will be discontinued with the implementation of CCRS.]

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S913 Insured Mail

* * * * *

2.0 MAILING

* * * * *

2.7 Receipt

[Revise 2.7 to read as follows:]

For each Insured Mail article mailed, the mailer receives a USPS sales receipt and the appropriate postmarked (*i.e.*, round date) Insured Mail form as follows:

a. Form 3813 when the insurance coverage is $50 or less.

b. Form 3813–P when the insurance coverage is more than $50.

* * * * *

S920 Convenience

* * * * *

S921 Collect on Delivery (COD) Mail

1.0 Basic Information

1.1 Description

[Insert text after first sentence to read as follows:]

* * *The recipient has the option to pay the COD charges using either cash or personal check. Only one form of payment may be used for a single mailpiece.* * *

* * * * *

3.0 MAILING

* * * * *

3.4 Indelible Ink, Mailer Errors

[Revise 3.4 to read as follows:]

The particulars required on the COD form must be handwritten with ink, typewritten, or computer printed. The USPS is not responsible for errors that a mailer makes in stating the charges to be collected. The mailer cannot stipulate "Cash Only" on the COD form.

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–9750 Filed 4–28–04; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031216314–3314–01; I.D. 041904C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments; Corrections

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

ACTION: Inseason adjustments to management measures; corrections; request for comments.

SUMMARY: NMFS announces changes to the recreational fishery, and to the commercial fishery's trawl rockfish conservation areas (RCAs) for the Pacific Coast groundfish fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks. This action also contains corrections and revisions to the 2004 management measures.

DATES: Effective 0001 hours (local time) April 29, 2004, until the 2005–06 annual specifications and management measures are effective; unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through June 1, 2004.

ADDRESSES: You may submit comments, identified by [031216314–01 and/or 0648–AR54], by any of the following methods:

- E-mail: *GroundfishInseason#1.nwr@noaa.gov*: identified by [031216314–01 and/or 0648–AR54] in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736; and e-mail: jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region website at: *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the 2004 fishing year (January 1–December 31, 2004) were initially published in the **Federal Register** as an emergency rule for January 1–February 29, 2004 (69 FR 1322, January 8, 2004) and as a proposed rule for March 1–December 31, 2004 (69 FR 1380, January 8, 2004). The emergency rule was amended at 69 FR 4084, January 28, 2004, and the final rule for March 1–December 31, 2004 was published in the **Federal Register** on March 9, 2004 (69 FR 11064).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, at its March 8–12, 2004, meeting in Tacoma, WA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding the 2004 optimum yields (OYs).

California's Recreational Fishery for the California Rockfish, Cabezon, Greenling Complex (RCG Complex)

California's recreational harvest exceeded California's recreational set asides for some species in 2003, including minor nearshore rockfish, bocaccio, canary rockfish, yelloweye rockfish, and lingcod. In order to reduce the recreational catch of rockfish in 2004, the California Department of Fish and Game (CDFG) proposed to their California Fish and Game Commission (California Commission) at their March 4–5, 2004 meeting to: (1) reduce the RCG Complex bag limit north of 40°10′ N. lat. to match the more restrictive RCG Complex bag limit south of 40°10′ N. lat., and (2) remove the shallow nearshore rockfish sub-bag limit within the RCG Complex bag limit south of 40°10′ N. lat. The shallow nearshore sub-bag limit implemented in 2003 did not function as anticipated and instead resulted in an increase in discard of nearshore rockfish, especially gopher rockfish. Removing this sub-bag limit is, therefore, projected to reduce rockfish mortality. The California Commission adopted these changes and CDFG recommended to the Pacific Council at their March 7–12, 2004, meeting that these changes also be made for Federal waters.

Based on CDFG and the California Commission's request, the Pacific Council recommended, and NMFS is implementing, a reduction in the RCG Complex bag limit north of 40°10′ N. lat. from 10 rockfish per day, of which no more than 2 may be bocaccio, 10 cabezon per day, 10 kelp greenling and 10 rock greenling per day to 10 RCG Complex fish per day (not including canary rockfish, yelloweye rockfish and cowcod, which are prohibited), of which up to 10 may be rockfish (no more than 1 of which may be bocaccio), no more than two fish per day may be greenling (kelp and/or other greenlings) and no more than three fish per day may be cabezon. Also based on CDFG and the California Commission's request, the Pacific Council recommended and NMFS is implementing removal of the shallow nearshore rockfish 2 fish sub bag limit from the RCG Complex bag limits south of 40°10′ N. lat.

California's Recreational Fishery for Lingcod Closed Nov-Dec

Based on a CDFG analysis presented at the Pacific Council's March meeting, the Pacific Council recommended that NMFS implement the following measures for California's recreational lingcod fishery: Increase the minimum size limit from 24 inches (61 cm) to 30 inches (77 cm), decrease the bag limit from 2 fish to 1 fish, and prohibit retention of lingcod off California during November and December 2004.

Prior to the March Pacific Council meeting, CDFG and NMFS jointly developed lingcod management measures that would keep the harvest of lingcod in the recreational fishery within CDFG's 2004 recreational catch projection of 346.8 mt. Because lingcod harvest exceeded the ABC in both 2002 and 2003, there was concern by NMFS

that the 2004 management measures, as proposed for 2004, would not keep harvest within the 2004 catch projection for California's recreational fishery. On February 18, 2004, CDFG sent NMFS a letter with a proposal and supporting analysis to increase the lingcod size limit from 24 inches (61–cm) to 30 inches (77 cm) and to decrease the bag limit from 2 fish to 1 fish per day beginning April 1, 2004. The CDFG analysis was based on the best available fisheries data at that time and showed that California's recreational lingcod take should stay within the 346.8 mt catch projection. Under a 30–inch (77–cm), 1 fish bag limit, the anticipated catch was expected to be 291 mt, leaving a 55.8 mt buffer. NMFS believed this buffer was reasonable, as it allowed up to a 13 percent hooking mortality for discarded catch. A 1998 CDFG study (Albin & Karpov in "Marine Fisheries Review") estimated lingcod hooking mortality with rod-and-reel at 4.3 percent.

At the March Pacific Council meeting, CDFG identified an error in the base catch data used in their projections for the February 18, 2004 analysis submitted to NMFS. Previously the base catch data used an average for 2002 and 2003 Wave 6 (November-December) catch data from the Marine Recreational Fisheries Statistical Survey. However, Wave 6 was closed entirely in 2002 and for part of 2003, thereby underestimating the average catch for 2002 and 2003 used for 2004 catch projections. At the March Council meeting, catch projections were revised using a proxy for the 2002 and 2003 Wave 6 data based on an average of Wave 1 (January-February) and Wave 5 (September-October) when the fishery was open. The base catch data used to recalculate the projections at the March Council meeting (Exhibit E.4.b, Supplemental CDFG Report) showed that a 30–inch (77–cm), 1 fish bag limit, while remaining within the original catch projection, provided less of a buffer (only 13 mt buffer). Therefore, CDFG proposed alternatives to keep the 2004 recreational lingcod take below the original catch projection and to increase the buffer. These alternatives included prohibiting the retention of lingcod during November through December, 2004. With a closure added during November through December, the buffer increases to 59 mt with an estimated 2004 catch of 288 mt. (NOTE: CDFG presented the wrong table to the Pacific Council under Option 2 of Exhibit E.4.b, Supplemental CDFG Report. The numbers projected for the November through December closure are from a new table provided to NMFS in an email on March 30, 2004, showing the correct analysis results and incorporating a request from the Pacific Council to include a 5 percent assumed discard mortality rate (the rate preliminarily recommended by the Pacific Council's Groundfish Management Team (GMT) at the March meeting).

NMFS had previously implemented the 30–inch minimum size limit (77–cm), 21–inch (54–cm) minimum filet size limit (increased from 16–inches (41–cm)), and the 1–fish bag limit for lingcod in the final rule (69 FR 11064, March 9, 2004). These management measures will become effective April 1, 2004. Based on the CDFG analysis, the Pacific Council recommended that NMFS also implement a November through December prohibition on the retention of lingcod through this action.

Trawl RCA Revised to Close Cordell Banks

NMFS received a request from CDFG during the comment period on the groundfish specifications and management measures proposed rule (69 FR 1380, January 8, 2004) to add a closure at Cordell Banks for both the commercial and recreational fisheries to reduce the take of overfished species. The Cordell Banks area has been identified in previous GMT meetings as an area with high catch of canary and other overfished species. The closure for the recreational fishery was implemented through the final rule (69 FR 11064, March 9, 2004). However, for the commercial fishery, NMFS and CDFG requested that the Pacific Council consider whether to include the Cordell Banks in the RCA and which species would be affected by this closure. For the fixed gear fleet, the Cordell Banks is closed because it lies within the non-trawl RCA boundaries for 2004. However, for the trawl fleet, the Cordell Banks is located shoreward of the trawl RCA throughout 2004. After considering this issue, the Pacific Council recommended that the commercial closure should apply to both the fixed gear and trawl fleets and should be closed to fishing for all species of Federal groundfish, similar to the RCAs. The Pacific Council recommended and NMFS is implementing a commercial closure of Cordell Banks by adjusting the 75–fm (137- m) and 100–fm (183–m) trawl RCA boundaries to incorporate the Cordell Banks into the trawl RCA.

Corrections and Revisions

The following corrections and revisions are being made to the 2004 management measures.

The recreational restrictions for the Cowcod Conservation Areas (CCAs) are corrected for waters shoreward of the 20 fm (37 m) depth contour such that retention of rockfish in this area is limited to minor nearshore rockfish. The CCAs are being clarified to eliminate a discrepancy between Federal and State recreational CCA restrictions. Federal CCA restrictions for the recreational fishery read, "Fishing for all groundfish, except sanddabs, will be prohibited in the CCA, except that recreational fishing for sanddabs, RCG complex, lingcod and California scorpionfish will be permitted shoreward of 20 fm in the CCA." State CCA restrictions for the recreational fishery read, "Recreational fishing for all groundfish, except rockfish, lingcod, and associated species limited to cabezon, greenlings of the genus *Hexogrammos*, California scorpionfish, California sheephead and ocean whitefish, is permitted in the CCA. Recreational fishing for all groundfish species is permitted shoreward of 20 fm in the CCA." Therefore, State recreational CCA restrictions are less restrictive than Federal recreational CCA restrictions. CDFG and NMFS brought this issue to the Pacific Council to get clarification on the Council's original intent with respect to the CCAs. The motion on CCAs from the November 2000 Council meeting, which first recommended the CCAs, stated that the CCAs would be closed, "except that the CCAs would be open to minor nearshore rockfish, cabezon and greenlings inside 20 fm." CDFG commented that minor nearshore rockfish was specified to discourage any pressure on shelf rockfish, such as vermillion rockfish, near the 20–fm (37–m) boundary line. Targeting on shelf rockfish might increase incidental catch of cowcod. At the time of the motion, minor nearshore rockfish included California scorpionfish. California scorpionfish was separated from minor nearshore rockfish in Federal recreational management measures beginning in 2003. In 2002, lingcod was added to the list of species that could be retained shoreward of the 20–fm (37–m) depth contour within the CCAs. In 2003, recreational sanddab fishing was permitted in the CCAs and shoreward of 20–fm (37–m) in the CCAs.

Therefore, the Pacific Council recommended that both Federal and State recreational CCA restrictions should be corrected. The Federal recreational CCA restrictions are herein corrected to read, "Fishing for all groundfish, except sanddabs, will be prohibited in the CCA, except that recreational fishing for sanddabs, minor

nearshore rockfish, cabezon, greenlings of the genus *Hexogrammos*, lingcod and California scorpionfish will be permitted shoreward of 20–fm (37–m) in the CCA."

The recreational RCA language is revised to allow combined RCA and non-RCA fishing trips. However, fishing cannot occur within the RCA while in possession of fish that are prohibited in the RCA. If an angler intends to fish for groundfish and other non-groundfish species in the same fishing trip, the angler must first fish within the RCA for non-groundfish species (except that fishing for sanddabs is permitted) and then fish shoreward of the RCA for groundfish. For example, with this clarification, a vessel could fish for salmon within the RCA at the start of a trip provided no prohibited groundfish species were onboard, then complete the trip by fishing for groundfish shoreward of the RCA. After hearing concern and confusion from the recreational community, the Enforcement Consultants (EC), an advisory body to the Pacific Council, brought this issue forward at the Council's April meeting, asking the Council to clarify its intent. The EC pointed out that combined RCA and non-RCA fishing trips did not bring up the same enforcement concerns that arise from combined trips for the commercial fishery. For the commercial fishery, it is difficult to enforce combined trips because groundfish fishing opportunity is available shoreward and seaward of the RCA and because of lack of at-sea enforcement capabilities. For the recreational fishery, there is not an enforcement concern because there are more at-sea enforcement capabilities in the nearshore where recreational fisheries occur. Groundfish fishing is only permitted shoreward of the RCA. Therefore, the Pacific Council recommended that NMFS clarify the recreational RCA language to prohibit recreational anglers from fishing in the RCA while in possession of species prohibited within the RCA.

California's recreational fishery between 40°10′ N. lat. and 34°27′ N. lat. is corrected to add a depth restriction to fishing occurring during September 1–29, 2004. The CDFG, along with the Pacific Council's GMT, recommended at the Pacific Council's September 2003 meeting where final 2004 management measures were recommended, that the recreational fishery between 40°10′ N. lat. and 34°27′ N. lat. be subject to a recreational RCA at a boundary line approximating the 30–fm (55–m) depth contour for the September through October two-month cumulative limit period. Part of this closure was inadvertently left out of the emergency, proposed, and final rules for the 2004 specifications and management measures. Thus, the recreational RCA between 40°10′ N. lat. and 34°27′ N. lat. is herein corrected to add a closure at a boundary approximating the 30–fm (55–m) depth contour during September 1–29, 2004.

A reference to the trawl RCA boundaries is corrected in section IV.A., paragraph (17)(c)(i) to refer to paragraph (f) rather than paragraph (e).

Language describing the non-trawl RCA is revised to allow sanddab fishing within the RCA with the specified gear. As stated in the limited entry fixed gear and open access trip limit tables, Table 4 (South) and Table 5 (South), fishing for sanddabs is permitted in the non-trawl RCA when fishing with hook and line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 in) point to shank, and up to 1 lb (0.45 kg) of weight per line. However, under the general definitions and provisions, paragraph IV.A.(17)(d), describing the non-trawl RCA, there is no reference to an exception for fishing within the RCA for sanddabs. This inseason action clarifies that paragraph, adding the exception to allow fishing for sanddabs within the RCA with the appropriate gear.

The introductory paragraph describing the 30–fm (55–m) RCA boundary in section IV. A., paragraph (17)(f)(ii)(E) is corrected to read "30 fm" instead of "300 fm."

Longitude coordinates for the 40–fm (73–m) and 50–fm (91–m) RCA boundaries in section IV. A., paragraph (17)(f)(iii) and (iv) are corrected to read "W. long." instead of "N. lat."

A latitude coordinate for the 60 fm (110 m) RCA boundary around the northern Channel Islands in section IV.A., paragraph (17)(f)(v)(A) line (13), is corrected to read "34°02.80′ N. lat." instead of "34°28.00′ N. lat."

Footnote 4 of the limited entry fixed gear trip limit table, Table 4 (South), is corrected to remove language stating that, "chilipepper rockfish is included in the trip limits for minor shelf rockfish." In Table 4 (South), chilipepper rockfish has been pulled out of the minor shelf rockfish category and given it's own trip limit in 2004. The reference to chilipepper in footnote 4 is a remnant from past trip limit tables and is removed.

NMFS Actions

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2004 specifications and management measures (69 FR 11064, March 9, 2004), to read as follows:

1. In section IV., under A. General Definitions and Provisions, paragraph (17)(b) is corrected to read as follows:

* * * * *

(b) *Cowcod Conservation Areas.* The CCAs are two areas off the southern California coast intended to protect cowcod. The specific latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(c)(2). During January 1–December 31, commercial fishing is prohibited within the CCAs, except that commercial fishing for rockfish and lingcod is permitted shoreward of the 20–fm (37–m) depth contour. In general, during March 1–December 31, recreational fishing for all groundfish, except sanddabs, is prohibited within the CCAs. However, recreational fishing for the following species is permitted shoreward of the 20–fm (37–m) depth contour: minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and sanddabs. (Note: California State regulations also permit recreational fishing for all greenlings of the genus *Hexogrammos* shoreward of the 20–fm (37–m) depth contour in the CCAs.) It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species stated in this section, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30″ N. lat., and bounded on the south by the latitude line at 32°59′30″ N. lat.

* * * * *

2. In section IV., under A. General Definitions and Provisions, paragraph (17)(c)(i) is corrected to read as follows:

* * * * *

(c) *Trawl (Limited Entry and Open Access Exempted Trawl Gears) Rockfish Conservation Area.*

(i) Trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours, such as 75 fm (137 m), 150 fm (274 m), and 200 fm (366 m). The trawl RCA is closed coastwide to limited entry groundfish trawl fishing, except for mid-water trawl vessels participating in the primary whiting season. The trawl RCA is also closed coastwide to open access exempted trawl fishing, except for pink

shrimp trawling. Fishing with any trawl gear is prohibited within the trawl RCA coastwide, unless that vessel is participating in the primary whiting season with mid-water trawl gear, trawling with midwater gear for yellowtail or widow rockfish when that is permitted, or trawling for pink shrimp. Coastwide, it is unlawful to take and retain, possess, or land any species of fish taken with trawl gear within the trawl RCA, except as permitted for vessels participating in the primary whiting season with mid-water trawl gear or for vessels participating in the pink shrimp trawl fishery. Throughout the year, boundaries for the trawl RCA are provided in Table 3 of section IV.B. and in Table 5 of section IV.C. and may be modified by NMFS inseason pursuant to the requirements of the Administrative Procedure Act (APA). Trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided below at paragraph (f) of this section.

* * * * *

3. In section IV., under A. General Definitions and Provisions, paragraph (17)(d)(i) is revised to read as follows:

* * * * *

(d) *Non-Trawl (Limited Entry Fixed Gear and Open Access Non-trawl Gears) Rockfish Conservation Area.*

(i) Non-trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours, such as 27 fm (49 m), 100 fm (183 m), and 150 fm (274 m). The non-trawl RCA is closed to non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, pot or trap, gillnet, set net, trammel net and spear) fishing for groundfish, except that fishing for sanddabs is permitted within the non-trawl RCA with the gear specified in Table 4 (South) of section IV.B. and Table 5 (South) of section IV.C. Fishing for groundfish, except sanddabs, with non-trawl gear is prohibited within the non-trawl RCA. It is unlawful to take and retain, possess, or land groundfish (except sanddabs) taken with non-trawl gear within the non-trawl RCA. Limited entry fixed gear and open access non-trawl gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish that occurs within the non-trawl RCA may not retain any groundfish taken on that trip. If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA. Throughout the year, boundaries for the non-trawl RCA are provided in Table 4 of section IV.B. and in Table 5 of section IV.C. and may be modified by NMFS inseason pursuant to the requirements of the APA. Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided below at paragraph (f) of this section.

* * * * *

4. In section IV., under A. General Definitions and Provisions, paragraph (17)(e)(i) is revised to read as follows:

* * * * *

(e) *Recreational Rockfish Conservation Area.*

(i) Recreational RCAs are closed areas intended to protect overfished rockfish species. Recreational RCAs may either have (1) boundaries defined by general depth contours or (2) boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours. The recreational RCA is closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. If a vessel fishes in the recreational RCA, it may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port. Throughout the year, boundaries for the recreational RCAs are provided in the text in section IV.D. under each state (Washington, Oregon and California) and may be modified by NMFS inseason. Recreational RCA boundaries that are defined by specific latitude and longitude coordinates are provided below at paragraph (f) of this section.

* * * * *

5. In section IV., under A. General Definitions and Provisions, the introductory text in paragraph (17)(f)(ii)(E) is corrected to read as follows:

* * * * *

(E) The 30–fm (55–m) depth contour around Santa Catalina Island off the State of California is defined by straight lines connecting all of the following points in the order stated:

* * * * *

6. In section IV., under A. General Definitions and Provisions, paragraphs (17)(f)(iii) and (17)(f)(iv) are corrected to read as follows:

* * * * *

(iii) The 40 fm (73 m) depth contour between 46°16′ N. lat. and 42°00′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°16.10′ W. long.;
(2) 46°15.29′ N. lat., 124°15.60′ W. long.;
(3) 46°11.90′ N. lat., 124°13.59′ W. long.;
(4) 46°06.93′ N. lat., 124°10.15′ W. long.;
(5) 46°05.33′ N. lat., 124°08.30′ W. long.;
(6) 45°58.69′ N. lat., 124°05.60′ W. long.;
(7) 45°57.71′ N. lat., 124°05.82′ W. long.;
(8) 45°53.97′ N. lat., 124°05.04′ W. long.;
(9) 45°49.75′ N. lat., 124°05.14′ W. long.;
(10) 45°47.88′ N. lat., 124°05.16′ W. long.;
(11) 45°47.07′N. lat., 124°04.21′ W. long.;
(12) 45°44.34′N. lat., 124°05.09′ W. long.;
(13) 45°40.64′N. lat., 124°04.90′ W. long.;
(14) 45°33.00′N. lat., 124°04.46′ W. long.;
(15) 45°32.27′N. lat., 124°04.74′ W. long.;
(16) 45°29.26′N. lat., 124°04.22′ W. long.;
(17) 45°19.99′N. lat., 124°04.62′ W. long.;
(18) 45°17.50′N. lat., 124°04.91′ W. long.;
(19) 45°11.29′N. lat., 124°05.19′ W. long.;
(20) 45°05.79′N. lat., 124°05.40′ W. long.;
(21) 45°05.07′N. lat., 124°05.93′ W. long.;
(22) 45°01.70′N. lat., 124°06.53′ W. long.;
(23) 44°58.75′N. lat., 124°07.14′ W. long.;
(24) 44°51.28′N. lat., 124°10.21′ W. long.;
(25) 44°49.49′N. lat., 124°10.89′ W. long.;

(26) 44°44.96′ N. lat., 124°14.39′ W. long.;
(27) 44°43.44′ N. lat., 124°14.78′ W. long.;
(28) 44°42.27′ N. lat., 124°13.81′ W. long.;
(29) 44°41.68′ N. lat., 124°15.38′ W. long.;
(30) 44°34.87′ N. lat., 124°15.80′ W. long.;
(31) 44°33.74′ N. lat., 124°14.43′ W. long.;
(32) 44°27.66′ N. lat., 124°16.99′ W. long.;
(33) 44°19.13′ N. lat., 124°19.22′ W. long.;
(34) 44°15.35′ N. lat., 124°17.37′ W. long.;
(35) 44°14.38′ N. lat., 124°17.78′ W. long.;
(36) 44°12.80′ N. lat., 124°17.18′ W. long.;
(37) 44°09.23′ N. lat., 124°15.96′ W. long.;
(38) 44°08.38′ N. lat., 124°16.80′ W. long.;
(39) 44°01.18′ N. lat., 124°15.42′ W. long.;
(40) 43°51.60′ N. lat., 124°14.68′ W. long.;
(41) 43°42.66′ N. lat., 124°15.46′ W. long.;
(42) 43°40.49′ N. lat., 124°15.74′ W. long.;
(43) 43°38.77′ N. lat., 124°15.64′ W. long.;
(44) 43°34.52′ N. lat., 124°16.73′ W. long.;
(45) 43°28.82′ N. lat., 124°19.52′ W. long.;
(46) 43°23.91′ N. lat., 124°24.28′ W. long.;
(47) 43°17.96′ N. lat., 124°28.81′ W. long.;
(48) 43°16.75′ N. lat., 124°28.42′ W. long.;
(49) 43°13.98′ N. lat., 124°31.99′ W. long.;
(50) 43°13.71′ N. lat., 124°33.25′ W. long.;
(51) 43°12.26′ N. lat., 124°34.16′ W. long.;
(52) 43°10.96′ N. lat., 124°32.34′ W. long.;
(53) 43°05.65′ N. lat., 124°31.52′ W. long.;
(54) 42°59.66′ N. lat., 124°32.58′ W. long.;
(55) 42°54.97′ N. lat., 124°36.99′ W. long.;
(56) 42°53.81′ N. lat., 124°38.58′ W. long.;
(57) 42°49.14′ N. lat., 124°39.92′ W. long.;
(58) 42°46.47′ N. lat., 124°38.65′ W. long.;
(59) 42°45.60′ N. lat., 124°39.04′ W. long.;
(60) 42°44.79′ N. lat., 124°37.96′ W. long.;
(61) 42°45.00′ N. lat., 124°36.39′ W. long.;
(62) 42°44.14′ N. lat., 124°35.16′ W. long.;
(63) 42°42.15′ N. lat., 124°32.82′ W. long.;
(64) 42°38.82′ N. lat., 124°31.09′ W. long.;
(65) 42°35.91′ N. lat., 124°31.02′ W. long.;
(66) 42°31.34′ N. lat., 124°34.84′ W. long.;
(67) 42°28.13′ N. lat., 124°34.83′ W. long.;
(68) 42°26.73′ N. lat., 124°35.58′ W. long.;
(69) 42°23.85′ N. lat., 124°34.05′ W. long.;
(70) 42°21.68′ N. lat., 124°30.64′ W. long.;
(71) 42°19.62′ N. lat., 124°29.02′ W. long.;
(72) 42°15.01′ N. lat., 124°27.72′ W. long.;
(73) 42°11.38′ N. lat., 124°25.62′ W. long.;
(74) 42°04.66′ N. lat., 124°24.39′ W. long.; and
(75) 42°00.00′ N. lat., 124°23.55′ W. long.

(iv) The 50–fm (91–m) depth contour between the U.S. border with Canada and the Swiftsure Bank is defined by straight lines connecting all of the following points in the order stated:
(1) 48°30.15′ N. lat., 124°56.12′ W. long.;

* * * * *

7. In section IV., under A. General Definitions and Provisions, paragraph (17)(f)(v)(A), line (13), is corrected to read as follows:

* * * * *

(13) 34°02.80′ N. lat., 119°21.40′ W. long.;

* * * * *

8. In section IV., under A. General Definitions and Provisions, paragraph (17)(f)(vi) is revised to read as follows:

* * * * *

(vi) The 75–fm (137–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

* * * * *

(123) 38°00.00′ N. lat., 123°22.19′ W. long.;
(124) 37°57.70′ N. lat., 123°25.98′ W. long.;
(125) 37°56.73′ N. lat., 123°25.22′ W. long.;
(126) 37°55.59′ N. lat., 123°25.62′ W. long.;
(127) 37°52.79′ N. lat., 123°23.85′ W. long.;
(128) 37°49.13′ N. lat., 123°18.83′ W. long.;
(129) 37°46.01′ N. lat., 123°12.28′ W. long.;
(130) 37°36.12′ N. lat., 123°00.33′ W. long.;
(131) 37°03.52′ N. lat., 122°37.57′ W. long.;
(132) 36°59.69′ N. lat., 122°27.32′ W. long.;
(133) 37°01.41′ N. lat., 122°24.41′ W. long.;
(134) 36°58.75′ N. lat., 122°23.81′ W. long.;
(135) 36°59.17′ N. lat., 122°21.44′ W. long.;
(136) 36°57.51′ N. lat., 122°20.69′ W. long.;
(137) 36°51.46′ N. lat., 122°10.01′ W. long.;
(138) 36°48.43′ N. lat., 122°06.47′ W. long.;
(139) 36°48.66′ N. lat., 122°04.99′ W. long.;
(140) 36°47.75′ N. lat., 122°03.33′ W. long.;
(141) 36°51.23′ N. lat., 121°57.79′ W. long.;
(142) 36°49.72′ N. lat., 121°57.87′ W. long.;
(143) 36°48.84′ N. lat., 121°58.68′ W. long.;
(144) 36°47.89′ N. lat., 121°58.53′ W. long.;
(145) 36°48.66′ N. lat., 121°50.49′ W. long.;
(146) 36°45.56′ N. lat., 121°54.11′ W. long.;
(147) 36°45.30′ N. lat., 121°57.62′ W. long.;
(148) 36°38.54′ N. lat., 122°01.13′ W. long.;
(149) 36°35.76′ N. lat., 122°00.87′ W. long.;
(150) 36°32.58′ N. lat., 121°59.12′ W. long.;
(151) 36°32.95′ N. lat., 121°57.62′ W. long.;
(152) 36°31.96′ N. lat., 121°56.27′ W. long.;
(153) 36°31.74′ N. lat., 121°58.24′ W. long.;
(154) 36°30.57′ N. lat., 121°59.66′ W. long.;
(155) 36°27.80′ N. lat., 121°59.30′ W. long.;
(156) 36°26.52′ N. lat., 121°58.09′ W. long.;
(157) 36°23.65′ N. lat., 121°58.94′ W. long.;
(158) 36°20.93′ N. lat., 122°00.28′ W. long.;
(159) 36°18.23′ N. lat., 122°03.10′ W. long.;
(160) 36°14.21′ N. lat., 121°57.73′ W. long.;
(161) 36°14.68′ N. lat., 121°55.43′ W. long.;
(162) 36°10.42′ N. lat., 121°42.90′ W. long.;
(163) 36°02.55′ N. lat., 121°36.35′ W. long.;

(164) 36°01.04′ N. lat., 121°36.47′ W. long.;
(165) 35°58.25′ N. lat., 121°32.88′ W. long.;
(166) 35°39.35′ N. lat., 121°22.63′ W. long.;
(167) 35°24.44′ N. lat., 121°02.23′ W. long.;
(168) 35°10.84′ N. lat., 120°55.90′ W. long.;
(169) 35°04.35′ N. lat., 120°51.62′ W. long.;
(170) 34°55.25′ N. lat., 120°49.36′ W. long.;
(171) 34°47.95′ N. lat., 120°50.76′ W. long.;
(172) 34°39.27′ N. lat., 120°49.16′ W. long.;
(173) 34°31.05′ N. lat., 120°44.71′ W. long.;
(174) 34°27.00′ N. lat., 120°36.54′ W. long.;
(175) 34°22.60′ N. lat., 120°25.41′ W. long.;
(176) 34°25.45′ N. lat., 120°17.41′ W. long.;
(177) 34°22.94′ N. lat., 119°56.40′ W. long.;
(178) 34°18.37′ N. lat., 119°42.01′ W. long.;
(179) 34°11.22′ N. lat., 119°32.47′ W. long.;
(180) 34°09.58′ N. lat., 119°25.94′ W. long.;
(181) 34°03.89′ N. lat., 119°12.47′ W. long.;
(182) 34°03.57′ N. lat., 119°06.72′ W. long.;
(183) 34°04.53′ N. lat., 119°04.90′ W. long.;
(184) 34°02.84′ N. lat., 119°02.37′ W. long.;
(185) 34°01.30′ N. lat., 119°00.26′ W. long.;
(186) 34°00.22′ N. lat., 119°03.20′ W. long.;
(187) 33°59.60′ N. lat., 119°03.16′ W. long.;
(188) 33°59.46′ N. lat., 119°00.88′ W. long.;
(189) 34°00.49′ N. lat., 118°59.08′ W. long.;
(190) 33°59.07′ N. lat., 118°47.34′ W. long.;
(191) 33°58.73′ N. lat., 118°36.45′ W. long.;
(192) 33°55.24′ N. lat., 118°33.42′ W. long.;
(193) 33°53.71′ N. lat., 118°38.01′ W. long.;
(194) 33°51.22′ N. lat., 118°36.17′ W. long.;
(195) 33°49.85′ N. lat., 118°32.31′ W. long.;
(196) 33°49.61′ N. lat., 118°28.07′ W. long.;
(197) 33°49.95′ N. lat., 118°26.38′ W. long.;
(198) 33°50.36′ N. lat., 118°25.84′ W. long.;
(199) 33°49.84′ N. lat., 118°24.78′ W. long.;
(200) 33°47.53′ N. lat., 118°30.12′ W. long.;
(201) 33°44.11′ N. lat., 118°25.25′ W. long.;
(202) 33°41.77′ N. lat., 118°20.32′ W. long.;
(203) 33°38.17′ N. lat., 118°15.70′ W. long.;
(204) 33°37.48′ N. lat., 118°16.73′ W. long.;
(205) 33°36.01′ N. lat., 118°16.55′ W. long.;
(206) 33°33.76′ N. lat., 118°11.37′ W. long.;
(207) 33°33.76′ N. lat., 118°07.94′ W. long.;
(208) 33°35.59′ N. lat., 118°05.05′ W. long.;
(209) 33°33.75′ N. lat., 117°59.82′ W. long.;
(210) 33°35.10′ N. lat., 117°55.68′ W. long.;
(211) 33°34.91′ N. lat., 117°53.76′ W. long.;
(212) 33°30.77′ N. lat., 117°47.56′ W. long.;
(213) 33°27.50′ N. lat., 117°44.87′ W. long.;
(214) 33°16.89′ N. lat., 117°34.37′ W. long.;
(215) 33°06.66′ N. lat., 117°21.59′ W. long.;
(216) 33°03.35′ N. lat., 117°20.92′ W. long.;
(217) 33°00.07′ N. lat., 117°19.02′ W. long.;
(218) 32°55.99′ N. lat., 117°18.60′ W. long.;
(219) 32°54.43′ N. lat., 117°16.93′ W. long.;
(220) 32°52.13′ N. lat., 117°16.55′ W. long.;
(221) 32°52.61′ N. lat., 117°19.50′ W. long.;
(222) 32°46.95′ N. lat., 117°22.81′ W. long.;
(223) 32°45.01′ N. lat., 117°22.07′ W. long.;
(224) 32°43.40′ N. lat., 117°19.80′ W. long.; and
(225) 32°33.74′ N. lat., 117°18.67′ W. long.

* * * * *

9. In section IV., under A. General Definitions and Provisions, paragraph (17)(f)(vii) is revised to read as follows:

* * * * *

(vii) The 100 fm (183 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

* * * * *

(196) 38°00.00′ N. lat., 123°23.08′ W. long.;
(197) 37°55.07′ N. lat., 123°26.81′ W. long.;
(198) 37°50.66′ N. lat., 123°23.06′ W. long.;
(199) 37°45.18′ N. lat., 123°11.88′ W. long.;
(200) 37°36.21′ N. lat., 123°01.20′ W. long.;
(201) 37°15.58′ N. lat., 122°48.36′ W. long.;
(202) 37°03.18′ N. lat., 122°38.15′ W. long.;
(203) 37°00.48′ N. lat., 122°33.93′ W. long.;
(204) 36°58.70′ N. lat., 122°27.22′ W. long.;
(205) 37°00.85′ N. lat., 122°24.70′ W. long.;
(206) 36°58.00′ N. lat., 122°24.14′ W. long.;
(207) 36°58.74′ N. lat., 122°21.51′ W. long.;
(208) 36°56.97′ N. lat., 122°21.32′ W. long.;
(209) 36°51.52′ N. lat., 122°10.68′ W. long.;
(210) 36°48.39′ N. lat., 122°07.60′ W. long.;
(211) 36°47.43′ N. lat., 122°03.22′ W. long.;
(212) 36°50.95′ N. lat., 121°58.03′ W. long.;
(213) 36°49.92′ N. lat., 121°58.01′ W. long.;
(214) 36°48.88′ N. lat., 121°58.90′ W. long.;
(215) 36°47.70′ N. lat., 121°58.75′ W. long.;
(216) 36°48.37′ N. lat., 121°51.14′ W. long.;
(217) 36°45.74′ N. lat., 121°54.17′ W. long.;
(218) 36°45.51′ N. lat., 121°57.72′ W. long.;
(219) 36°38.84′ N. lat., 122°01.32′ W. long.;
(220) 36°35.62′ N. lat., 122°00.98′ W. long.;
(221) 36°32.46′ N. lat., 121°59.15′ W. long.;
(222) 36°32.79′ N. lat., 121°57.67′ W. long.;
(223) 36°31.98′ N. lat., 121°56.55′ W. long.;
(224) 36°31.79′ N. lat., 121°58.40′ W. long.;
(225) 36°30.73′ N. lat., 121°59.70′ W. long.;
(226) 36°30.31′ N. lat., 122°00.22′ W. long.;
(227) 36°29.35′ N. lat., 122°00.36′ W. long.;
(228) 36°27.66′ N. lat., 121°59.80′ W. long.;
(229) 36°26.22′ N. lat., 121°58.35′ W. long.;
(230) 36°21.20′ N. lat., 122°00.72′ W. long.;
(231) 36°20.47′ N. lat., 122°02.92′ W. long.;

(232) 36°18.46′ N. lat., 122°04.51′ W. long.;
(233) 36°15.92′ N. lat., 122°01.33′ W. long.;
(234) 36°13.76′ N. lat., 121°57.27′ W. long.;
(235) 36°14.43′ N. lat., 121°55.43′ W. long.;
(236) 36°10.24′ N. lat., 121°43.08′ W. long.;
(237) 36°07.66′ N. lat., 121°40.91′ W. long.;
(238) 36°02.49′ N. lat., 121°36.51′ W. long.;
(239) 36°01.07′ N. lat., 121°36.82′ W. long.;
(240) 35°57.84′ N. lat., 121°33.10′ W. long.;
(241) 35°50.36′ N. lat., 121°29.32′ W. long.;
(242) 35°39.03′ N. lat., 121°22.86′ W. long.;
(243) 35°24.30′ N. lat., 121°02.56′ W. long.;
(244) 35°16.53′ N. lat., 121°00.39′ W. long.;
(245) 35°04.82′ N. lat., 120°53.96′ W. long.;
(246) 34°52.51′ N. lat., 120°51.62′ W. long.;
(247) 34°43.36′ N. lat., 120°52.12′ W. long.;
(248) 34°37.64′ N. lat., 120°49.99′ W. long.;
(249) 34°30.80′ N. lat., 120°45.02′ W. long.;
(250) 34°27.00′ N. lat., 120°39.00′ W. long.;
(251) 34°21.90′ N. lat., 120°25.25′ W. long.;
(252) 34°24.86′ N. lat., 120°16.81′ W. long.;
(253) 34°22.80′ N. lat., 119°57.06′ W. long.;
(254) 34°18.59′ N. lat., 119°44.84′ W. long.;
(255) 34°15.04′ N. lat., 119°40.34′ W. long.;
(256) 34°14.40′ N. lat., 119°45.39′ W. long.;
(257) 34°12.32′ N. lat., 119°42.41′ W. long.;
(258) 34°09.71′ N. lat., 119°28.85′ W. long.;
(259) 34°04.70′ N. lat., 119°15.38′ W. long.;
(260) 34°03.33′ N. lat., 119°12.93′ W. long.;
(261) 34°02.72′ N. lat., 119°07.01′ W. long.;
(262) 34°03.90′ N. lat., 119°04.64′ W. long.;
(263) 34°01.80′ N. lat., 119°03.23′ W. long.;
(264) 33°59.32′ N. lat., 119°03.50′ W. long.;
(265) 33°59.00′ N. lat., 118°59.55′ W. long.;
(266) 33°59.51′ N. lat., 118°57.25′ W. long.;
(267) 33°58.82′ N. lat., 118°52.47′ W. long.;
(268) 33°58.54′ N. lat., 118°41.86′ W. long.;
(269) 33°55.07′ N. lat., 118°34.25′ W. long.;
(270) 33°54.28′ N. lat., 118°38.68′ W. long.;
(271) 33°51.00′ N. lat., 118°36.66′ W. long.;
(272) 33°39.77′ N. lat., 118°18.41′ W. long.;
(273) 33°35.50′ N. lat., 118°16.85′ W. long.;
(274) 33°32.68′ N. lat., 118°09.82′ W. long.;
(275) 33°34.09′ N. lat., 117°54.06′ W. long.;
(276) 33°31.60′ N. lat., 117°49.28′ W. long.;
(277) 33°16.07′ N. lat., 117°34.74′ W. long.;
(278) 33°07.06′ N. lat., 117°22.71′ W. long.;
(279) 32°59.28′ N. lat., 117°19.69′ W. long.;
(280) 32°55.36′ N. lat., 117°19.54′ W. long.;
(281) 32°53.35′ N. lat., 117°17.05′ W. long.;
(282) 32°53.34′ N. lat., 117°19.13′ W. long.;
(283) 32°46.39′ N. lat., 117°23.45′ W. long.;
(284) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(285) 32°34.22′ N. lat., 117°21.20′ W. long.

* * * * *

10. In section IV., under B. Limited Entry Fishery, footnote 4 in Table 4 (South) is corrected to read as follows:

* * * * *

BILLING CODE 3510–22–S

Table 4 (South). 2004 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 32004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	40°10' - 34°27' N. lat.	30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		20 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
1	**Minor slope rockfish[4/]**						
2	40°10' - 38° N. lat.	7,000 lb/ 2 months					
3	South of 38° N. lat.	40,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	7,000 lb/ 2 months					
6	South of 38° N. lat.	40,000 lb/ 2 months					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
10	**Longspine thornyhead**	10,000 lb/ 2 months					
11	**Shortspine thornyhead**	2,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**Rex sole**						
16	**All other flatfish[2/]**						
17	**Whiting[3/]**	10,000 lb/ trip					
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**						
19	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	CLOSED[5/]	2,000 lb/ 2 months				
21	**Chilipepper rockfish**	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
22	**Canary rockfish**	CLOSED[5/]					
23	**Yelloweye rockfish**	CLOSED[5/]					
24	**Cowcod**	CLOSED[5/]					
25	**Bocaccio**						
26	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED[5/]	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	CLOSED[5/]	300 lb/ 2 months				
28	**Minor nearshore rockfish**						
29	Shallow nearshore						
30	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
31	South of 34°27' N. lat.	CLOSED[5/]	300 lb/ 2 months				
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months		400 lb/month	500 lb/ 2 months
34	South of 34°27' N. lat.	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months			400 lb/ 2 months
35	California scorpionfish	CLOSED[5/]	300 lb/ 2 months		400 lb/ 2 months		300 lb/ 2 months

Table 4 (South). Continued

36	Lingcod[6/]	CLOSED[5/]	400 lb/ month, when nearshore open	CLOSED[5/]
37	Other fish[8/]	Not limited		

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
4/ POP is included in the trip limits for minor slope rockfish.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(17)(f) that may vary seasonally.
8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

11. In section IV., under D. Recreational Fishery, paragraph (3)(b)(i)(A) is corrected to read as follows:

* * * * *

(A) *Cowcod Conservation Areas.* Coordinates defining the boundaries of the Cowcod Conservation Areas (CCAs) are described in Federal regulations at 50 CFR 660.304(c). Recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for sanddabs is permitted subject to the provisions in paragraph IV.D.(3)(b)(v). However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs from March 1 through December 31, subject to the bag limits in this section: minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and sanddabs. (Note: California State regulations also permit recreational fishing for all greenlings of the genus *Hexogrammas* shoreward of the 20–fm (37–m) depth contour in the CCAs.)

* * * * *

12. In section IV., under D. Recreational Fishery, paragraph (3)(b)(i)(B) is revised and paragraph (3)(b)(i)(B)(1) is corrected to read as follows:

* * * * *

(B) *Recreational Rockfish Conservation Areas.* The recreational Rockfish Conservation Areas, or recreational RCAs, are areas that are closed to recreational fishing for groundfish. See also paragraph IV.A.(17)(e).

(1) Between 40°10′ N. lat. and 34°27′ N. lat., recreational fishing for all groundfish, except sanddabs, is prohibited seaward of a boundary line approximating the 30–fm (55–m) depth contour along the mainland coast and along islands and offshore seamounts during January 1 through February 29 and September 1 through December 31; is prohibited seaward of the 20–fm (37–m) depth contour during May 1 through August 31; and is closed entirely during March 1 through April 30 (i.e., prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in section IV.A.(17)(f). Under State law, recreational fishing for rockfish, lingcod, and associated species limited to cabezon, greenlings of the genus *Hexagrammos*, California scorpionfish, California sheephead, and ocean whitefish are prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands. For a definition of the Farallon Islands, see paragraph IV.A.(17)(f). Recreational fishing for certain groundfish species is also prohibited in waters of the Cordell Banks, located at 38°02′ N. lat. and 123°25′ W. long., and within a 5 nautical mile radius around this point. This portion of the Cordell Banks is closed to fishing for rockfish, lingcod, cabezon, kelp greenlings and California scorpionfish. (Note: California State regulations also prohibit the retention of other greenlings of the genus *Hexagrammos*, California sheephead and ocean whitefish.) For a definition of Cordell Banks, see paragraph IV.A.(17)(f).

* * * * *

13. In section IV., under D. Recreational Fishery, paragraph (3)(a)(i)(B) is revised to read as follows:

* * * * *

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of two hooks and one line when fishing for rockfish.

(1) From January 1 through April 30, the bag limit is 10 rockfish per day, of which no more than two may be bocaccio. The following daily bag limits also apply: no more than 10 cabezon per day and no more than 10 kelp greenling and 10 rock greenling per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) From May 1 through December 31, the bag limit is 10–RCG Complex fish per day (not including canary rockfish, yelloweye rockfish and cowcod, which are prohibited), of which up to 10 may be rockfish, no more than two of which may be bocaccio. Also within the 10–RCG Complex fish per day limit, no more than two fish per day may be greenling (kelp and/or other greenlings) and no more than 3 fish per day may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

14. In section IV., under D. Recreational Fishery, paragraph (3)(a)(ii) is revised to read as follows:

* * * * *

(ii) *Lingcod.*

(A) *Seasons.* North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through October 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10′ N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of two hooks and one line when fishing for lingcod. The bag limit is 2 lingcod per day from January 1 through March 31 and 1 lingcod per day from April 1 through October 31. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length from January 1 through March 31 and no smaller than 30 in (77 cm) total length from April 1 through October 31.

(D) *Dressing/Filleting.* Lingcod fillets may be no smaller than 16 in (41 cm) in length from January 1 through March 31 and no smaller than 21 in (54 cm) from April 1 through October 31 in length.

* * * * *

15. In section IV., under D. Recreational Fishery, paragraph (3)(b)(ii)(B) is revised to read as follows:

* * * * *

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of two hooks and one line when fishing for rockfish.

(1) From January 1 through April 30 when the season for the RCG complex is open, the bag limit is 10–RCG Complex fish per day (not including canary rockfish, yelloweye rockfish and cowcod, which are prohibited), of which up to 10 may be rockfish, no more than 1 of which may be bocaccio and no more than 2 of which may be shallow nearshore rockfish. (Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.) Also within the 10–RCG Complex fish per day limit, no more than 2 fish per day may be greenling (kelp and/or other greenlings) and no more than 3 fish per day may be cabezon. Lingcod, California scorpionfish and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) From May 1 through December 31, the bag limit is 10–RCG Complex fish per day (not including canary rockfish, yelloweye rockfish and cowcod, which are prohibited), of which up to 10 may be rockfish, no more than 1 of which may be bocaccio. Also within the 10–RCG Complex fish per day limit, no more than 2 fish per day may be greenling (kelp and/or other greenlings) and no more than 3 fish per day may be cabezon. Lingcod, California scorpionfish and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

16. In section IV., under D. Recreational Fishery, paragraph (3)(b)(iv) is corrected to read as follows:

* * * * *

(iv) *Lingcod.*

(A) *Seasons.* Between 40°10′ N. lat. and 34°27′ N. lat., recreational fishing for lingcod is open from January 1 through February 29 and from May 1 through October 31 (i.e., it's closed from March 1 through April 30 and from November 1 through December 31). South of 34°27′ N. lat., recreational fishing for lingcod is open from March 1 through October 31 (i.e., it's closed from January 1 through February 29 and from November 1 through December 31). When recreational fishing for lingcod is open, it is permitted only shoreward of the recreational RCA, as described in paragraph IV.D.(3)(b)(i)(B) above.

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of two hooks and one line when fishing for lingcod. The bag limit is two lingcod per day from January 1 through March 31 and one lingcod per day from April 1 through October 31. Lingcod do not count against the 10–RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* In times and areas when the recreational season for lingcod is open, lingcod may be no smaller than 24 in (61 cm) total length from January 1 through March 31 and no smaller than 30 in (77 cm) total length from April 1 through October 31.

(D) *Dressing/Filleting.* In times and areas when the recreational season for lingcod is open, lingcod fillets may be no smaller than 16 in (41 cm) in length from January 1 through March 31 and no smaller than 21 in (54 cm) from April 1 through October 31 in length.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see ADDRESSES) during business hours.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B), because providing prior notice and opportunity for comment would be impracticable, unnecessary and contrary to the public interest. The data upon which these recommendations were based was provided to the Pacific Council and the Pacific Council made its recommendations at its March 7–12, 2004, meeting in Tacoma, WA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect as explained below. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable because affording prior notice and opportunity for public comment would take too long, thus impeding the Agency's function of managing fisheries to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document include changes to California's recreational fishery and changes to the commercial trawl RCA off California. Changes to California's recreational fishery management measures must be implemented in a timely manner to protect overfished groundfish species, such as lingcod and canary rockfish, and to keep the harvest of other groundfish species, such as minor nearshore rockfish, within the harvest levels projected to be taken off the State of California in 2004. Changes to California's recreational RCG complex bag limits must be in effect by May 1, 2004, to keep harvest within the levels projected and to conform Federal and State recreational regulations. Changes to California's commercial trawl RCA are intended to reduce the take of overfished groundfish species by closing Cordell Banks, an area of high catch of canary rockfish and other overfished species, to commercial fishing in an effort to keep groundfish take within the OYs set for the year. Delaying these changes to management measures could lead to early closures of the fishery. This would contradict one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

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

Dated: April 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–9649 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 042304C]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2004 halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 26, 2004, through 1200 hrs, A.l.t., July 4, 2004.

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

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

The 2004 final harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004), established the second seasonal apportionment of the halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA for the period 1200 hrs, A.l.t., April 1, 2004, through 1200 hrs, A.l.t., July 4, 2004, as 300 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2004 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA.

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

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

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

Dated: April 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–9757 Filed 4–26–04; 4:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 83
Thursday, April 29, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–119–1]

RIN 0579–AB78

Importation of Small Lots of Seed Without Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the current phytosanitary certificate requirement. This proposed change is necessary because several entities that import small lots of seed-individual importers, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The proposed change would make it feasible for those entities to import small lots of seed and would ensure prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing the Animal and Plant Health Inspection Service with necessary information about the quality, quantity, and diversity of the imported material.

DATES: We will consider all comments that we receive on or before June 28, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02–119–1, 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. 02–119–1.
- *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. 02–119–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Tschanz, Senior Staff Officer, Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236, (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests into the United States. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37–14, referred to below as the regulations) prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Nursery stock, plants, seeds, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not widely distributed in the United States are listed in the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

All other nursery stock, plants, seeds, and other propagative plant material that can be inspected, treated, or handled to prevent them from introducing plant pests are considered restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that include a phytosanitary certificate and port of entry inspection requirement and that may include the need for a permit, treatment, or postentry quarantine.

Paragraph (a) of § 319.37–4 of the regulations requires that any restricted article offered for importation into the United States, other than certain greenhouse-grown plants from Canada, be accompanied by a phytosanitary certificate of inspection (phytosanitary certificate). Section 319.37–1 of the regulations defines a phytosanitary certificate as a document relating to a restricted article, which: (1) Is issued by a plant protection official of the country in which the restricted article was grown; (2) is issued not more than 15 days prior to shipment of the restricted article from the country in which grown; (3) is addressed to the plant protection service of the United States (*i.e.*, the Plant Protection and Quarantine program [PPQ] of the Animal and Plant Health Inspection Service [APHIS]); (4) contains a description of the restricted article intended to be imported into the United States; (5) certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States; and (6) contains any specific additional declarations required under the regulations.

A phytosanitary certificate documents the origin of the shipment and ensures inspection in the country of origin by a member of that country's national plant protection organization, thus helping to ensure the shipment of commodities free of plant pests or noxious weeds. Principles and guidelines for the preparation and issuance of phytosanitary certificates have been established under the International Plant Protection Convention (IPPC), which is acknowledged by the World Trade Organization in the Agreement on the Application of Sanitary and Phytosanitary Measures as the international standard-setting organization for phytosanitary measures affecting trade.

Phytosanitary certificates are recognized as an internationally accepted form of pest risk mitigation. Pest risk mitigation at the place of origin is often viewed as the most viable means of preventing the introduction of plant pests. Signatories to the IPPC, which include the United States and over 100 other countries, agree that pest risk mitigation is a responsibility of the exporting country, and that they are willing and able to issue phytosanitary certificates.

Prior to January 2002, APHIS had not consistently and routinely enforced the phytosanitary certificate requirement in § 319.37–4 in all instances involving the importation of restricted articles under the regulations. Our policy had been not to reject a shipment based solely on the lack of a phytosanitary certificate. We enforced the requirement that a phytosanitary certificate accompany shipments of restricted articles in those situations where our regulations require that the phytosanitary certificate include an additional declaration, proof of treatment, or both. In other cases, our policy had provided APHIS inspectors the latitude to allow entry of the shipment, even though it was not accompanied by a phytosanitary certificate.

In light of increased quantities, types, and sources of nursery stock, plants, and other propagative plant material offered for importation into the United States, coupled with the findings of a 1999 safeguarding report,[1] we reevaluated our policy regarding the enforcement of the phytosanitary certificate requirement in § 319.37–4(a). We decided that it was necessary for us to enforce the phytosanitary certificate requirement on a consistent, mandatory basis with respect to all restricted articles offered for importation into the United States in order to effectively mitigate the risk of those articles introducing foreign plant pests into the United States.

On July 23, 2001, we published in the **Federal Register** (66 FR 38137–38139, Docket No. 00–119–1) a policy statement advising the public of our decision to begin enforcing, on a consistent basis, the existing requirement in § 319.37–4(a) of the regulations that a phytosanitary certificate of inspection accompany restricted articles, other than certain greenhouse-grown plants from Canada, that are offered for importation into the United States under the regulations. We notified the public that we intended to begin routinely enforcing this requirement effective September 21, 2001.

On August 31, 2001, we published in the **Federal Register** (66 FR 45921, Docket No. 00–119–2) a notice advising the public of our decision to delay by 120 days the effective date of that policy statement. This delay, which had been requested by several parties, moved the effective date to January 22, 2002, thus allowing additional time for affected parties to make preparations to comply with the requirement.

Although the majority of the entities who import large shipments of plants and seeds were not affected by the more consistent, mandatory enforcement of the phytosanitary certificate requirement, some smaller entities have been adversely affected by the enforcement of this requirement. Several horticultural societies, individual importers, and small entities specializing in foreign plants have written to APHIS expressing their concerns and outlining their difficulties in complying with the regulations. Many horticultural societies import seeds of various genera from several different seed donors in consolidated shipments, which are then distributed among their members. In order to comply with the phytosanitary certificate requirement, each separate packet of seeds from each genus and from each donor within the consolidated shipment would be required to be inspected and certified. Typically, the certifying country charges a fee for these services, which varies from country to country. In many cases, these importers and exporters have been unable to obtain the necessary phytosanitary certificates because the official plant protection agency of the exporting country did not offer inspection services, or phytosanitary certificates, for small shipments of seed because the time required to complete the inspection would have made the process cost-inefficient. In cases where inspection services and phytosanitary certificates were available for small lots of seed, the costs of the inspection and the certificate, which vary by country but can be as much as $100 or more, were prohibitive and often equal to several times the value of the commodity itself.

Permits

Since obtaining a phytosanitary certificate is not feasible in many cases for those entities interested in importing small lots of seed, which would consist of a maximum of 50 seeds of 1 taxon and a maximum of 50 seed packets per shipment, we are proposing to allow the importation of small lots of seed using a permit rather than a phytosanitary certificate. Paragraph (b) of § 319.37–3 of the regulations describes the information that is required on applications for permits to import certain restricted articles, which would include small lots of seed. The completed permit application must contain the following information: (1) Name, address, and telephone number of the importer; (2) approximate quantity and kinds (botanical designations) of articles intended to be imported; (3) country or locality where grown; (4) intended U.S. port of entry; (5) means of transportation, *e.g.*, mail, airmail, express, air express, freight, airfreight, or baggage; and (6) expected date of arrival. The PPQ program of APHIS will review the application and will then decide whether to issue a permit and the applicable conditions for importation. Permits would be issued at the discretion of APHIS only to residents of the United States, whether an individual or an organization.

Although some importers occasionally hand carry various commodities into the United States in baggage ("baggage" is one of the means of transportation cited in item (5) in the previous paragraph), this practice is discouraged by APHIS–PPQ. In the case of small lots of seed, this practice would not be an option because of the additional requirement that the shipments must be inspected at a PPQ plant inspection station in accordance with proposed § 319.37–4(d)(3). Permits will be denied to anyone indicating that "baggage" will be the means of transportation for importing the commodity.

As with permits for other plant material that is imported into the United

[1] The safeguarding report, entitled "Safeguarding American Plant Resources, A Stakeholder Review of the APHIS–PPQ Safeguarding System," was prepared by the National Plant Board at APHIS's request and can be viewed on the Internet at *http://www.aphis.usda.gov/ppq/safeguarding*. The report advocates greater use of offshore mitigating measures such as phytosanitary certificates.

States, the permit for the small lots of seed would be sent to the importer along with written instructions, a copy of the import requirements, and a standard green and yellow shipping label. The instructions would direct the importer to have the seed sent to a PPQ plant inspection station at a port of entry for quarantine inspection and clearance. The address of the appropriate plant inspection station would appear on the standard green and yellow permit shipping label. The importer would be directed to send the green and yellow shipping label and copies of the permit and import requirements to the overseas seed supplier. The supplier would have to attach the green and yellow shipping label, clearly visible and unobstructed by other shipping labels, to the outside of the shipping container. The supplier would have to enclose an invoice and a copy of the permit in the shipping container. The supplier would be responsible for ensuring that the seed meets the import conditions specified in the permit.

The seed would be inspected after arrival at the plant inspection station to ensure that the shipment meets the conditions of the permit and import requirements. If the seed passes inspection, the shipment would be forwarded to the importer. If the seed shipment did not pass inspection, the importer would be notified and given the option to treat the shipment, if possible; to have the shipment destroyed; or to return the shipment to the supplier. The importer would be responsible for shipping costs (which are discussed under the heading "Executive Order 12866 and Regulatory Flexibility Act" later in this document) to forward the shipment and would be responsible for the shipping costs of returning the shipment to the supplier. However, there would be no cost to the importer to have the shipment destroyed. Treatment would be offered at no cost to the importer unless the shipments were not treated during normal duty hours or the treatments were conducted by private contractors. Private contractors are sometimes used for fumigation treatments of shipments that come into western ports that do not have fumigation chambers at the ports themselves.

Permit Requirements

In order to provide a level of protection equivalent to that provided by the phytosanitary certificate against the introduction or dissemination of plant pests through the importation of seeds, we are proposing several additional requirements that would have to be met in order for shipments of small lots of seed to qualify for importation under a permit. These additional requirements, which we would include as permit conditions, would be as follows: (1) Each seed packet would have to be clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level; (2) there could be a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet; (3) there could be a maximum of 50 seed packets per shipment; (4) the seeds would have to be free from pesticides; (5) the seed packets would have to be in gas permeable packages; (6) the shipment would have to be free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, or mites; and (7) at the time of importation, the shipment would have to be sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a port of entry listed in § 319.37–14(b) and designated by an asterisk. These additional requirements would be necessary in order to address the safety issues that are usually covered by the phytosanitary certificate.

Upon review of the permit application, additional specific permit conditions, besides the ones listed above, may be required by PPQ in order to prevent the introduction into the United States of a plant pest or noxious weed. As stated previously, the permits would direct that the packages be sent to a plant inspection station for inspection to ensure that the seeds meet all of the additional conditions.

These proposed provisions for the importation of small lots of seed without a phytosanitary certificate apply only to seeds that are already enterable under the current regulations. Permits in lieu of phytosanitary certificates would only be available for seeds that:

- Are not of any prohibited genera as listed in § 319.37–2 of the regulations. Seeds from genera that are listed in the regulations as prohibited articles would not be affected by the proposed provisions or be allowed entry into the United States. A list of prohibited genera will accompany the permit.
- Are not of any noxious weed species listed in 7 CFR part 360. Seeds of any Federal noxious weeds species would continue to be regulated under 7 CFR part 360 and would not be affected by the proposed provisions. (The list of noxious weeds can be found in 7 CFR 360.200 or on the Internet at *http://www.aphis.usda.gov/ppq/permits*. Click on the Noxious Weeds link and then click on the link for the Federal Noxious Weed List.)
- Do not require an additional declaration on a phytosanitary certificate in accordance with § 319.37–5 of the regulations. The regulations in § 319.37–5 require seeds and other restricted articles of specified genera from the listed countries to be accompanied by a phytosanitary certificate of inspection that contains an accurate additional declaration that the article meets certain additional inspection and certification requirements. Any seeds that require an additional declaration on a phytosanitary certificate in accordance with these regulations would not be affected by the proposed provisions.
- Do not require treatment in accordance with § 319.37–6 of the regulations. Section 319.37–6 of the regulations lists specific treatments for seeds of several different genera. Any seeds that require specific treatment in accordance with these regulations would not be affected by the proposed provisions.
- Are eligible for importation under the regulations in 7 CFR parts 330 and 361. Part 330 restricts the interstate movement of plant pests and means of conveyance and certain other articles to prevent the dissemination of plant pests into the United States. Part 361 provides certain labeling and other requirements for the importation of agricultural or vegetable seeds to prevent the dissemination of noxious weeds into the United States.

Request for Suggestions

The changes proposed in this document are necessary to meet the needs of individuals and small entities who wish to import small lots of seed. There has been some concern that large, commercial entities might use these provisions as a means to avoid paying the costs related to phytosanitary certification by dividing their large shipments into numerous small lots and requesting permits for each lot. We encourage the submission of suggestions on specific factors we might consider in our reviews of permit applications in order to protect against any misuse of these provisions.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed

by the Office of Management and Budget.

In this document, we are proposing to amend the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the phytosanitary certificate requirement. This proposed change is necessary because several entities that import small lots of seed—individual importers, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The proposed change would make it feasible for those entities to import small lots of seed and would ensure prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing APHIS with necessary information about the quality, quantity, and diversity of the imported material.

For this proposed rule, we have prepared an economic analysis, which is set out below. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this proposed rule on small entities as required by the Regulatory Flexibility Act.

Seed production and trade play important roles in the U.S. economy. The total market value of seeds purchased by farmers in 2001 was about $7.6 billion, and cash receipts from these crops were valued at about $96 billion for the same year.[2] The United States is a net exporter of seeds. During the 2001–2002 seed marketing year, which runs from July through June, the United States exported 1,963 million pounds of planting seeds, valued at approximately $823 million, and imported 653 million pounds of seeds, valued at approximately $398 million.

Although U.S. exports of planting seeds are widely distributed among several different trading partners, there are 10 countries that together account for about 75 percent of the total U.S. seed exports (table 1). Imports of planting seed into the United States also come from several different countries. The top 10 suppliers together account for approximately 84 percent of the total U.S. imports of planting seed (table 1).

TABLE 1.—U.S. EXPORTS AND IMPORTS OF PLANTING SEEDS IN 2001–2002

U.S. exports (in million $)	
Mexico	249.9
Canada	125.6
Japan	59.1
Italy	40.6
France	36.6
Netherlands	32.2
Spain	24.2
China	16.1
Korea	15.4
Saudi Arabia	13.8
U.S. imports (in million $)	
Chile	105.8
Mexico	105
Netherlands	36.5
Argentina	21.2
China	17.9
Japan	14
Finland	11.1
Australia	8.3
Denmark	7.5
India	7.1

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States,* Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

Many varieties of seed are traded between the United States and other countries. The major categories include grasses, other forages, pulses, vegetables, field crops, and miscellaneous varieties of plants (flowers, trees, and shrubs). Field crops are the largest category of seed exports and imports (table 2).

TABLE 2.—TYPES AND VALUES OF SEED TRADED BETWEEN THE UNITED STATES AND TRADING PARTNERS

Type of seed	Export (in million $)	Import (in million $)
Field crops	315	131
Vegetable	251	104
Grasses	103	35
Miscellaneous	67	60
Forage	49	21
Pulses	40	49

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States,* Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

The availability of seeds of good quality contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. There are close to 900 seed companies in the United States that engage in certified seed trade (domestic and international). In addition, specialized groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, and donate specialty seeds and often import small lots of seed.

As an alternative to the proposed changes, we considered maintaining the status quo. The current regulations require imported seeds to be inspected and to be accompanied by a phytosanitary certificate. Importers of large quantities of seed are readily able to obtain the required phytosanitary certificates. Because the time and effort involved in inspection and certification are not directly proportional to the volume of seeds, many of the exporting countries have been reluctant to invest the necessary resources to provide phytosanitary certificates and inspections for small lots of seed. In the countries that do offer inspection and certification services for small lots of seed, the costs of these services has been prohibitive for the seed importers. As a result, seed importers have either been unable to obtain the necessary phytosanitary certificates for small lots of seed or have had to pay fees that greatly exceeded the value of the seeds themselves. Therefore, maintaining the status quo would not be an

[2] USDA/National Agricultural Statistics Service, Agricultural Statistics 2002, June 2002.

economically feasible option for importers of small lots of seed.

Costs and Benefits

The proposed changes might result in a slight cost increase for the Federal Government since import permits and the port of entry inspection activities are currently provided without a fee. If the proposed changes result in increased importation of small lots of seed, there could also be a slight increase in the workload for processing the permits but, since imports of small lots of seed are a very small fraction of the total domestic supply of seeds, no significant change in supply or price is expected.

The proposed changes are expected to generate several benefits without increasing costs for affected private entities. Plant specialists, gardeners, arboreta, and horticultural societies would be able to more widely acquire new kinds of seeds to expand plant diversity, such as plant species that are drought-or disease-resistant or other unique types of plants. Private gardeners would benefit from an increased availability of special seeds. Also, the entry of imported seeds through plant inspection stations would provide APHIS with a more accurate picture of seed import activity, using data generated from permit issuance and the actual importation data from U.S. ports of entry. Finally, the risk of the introduction or dissemination of plant diseases would be reduced, if seeds that are currently being imported illegally because of the costs and other difficulties associated with obtaining a phytosanitary certificate would be eligible for legal importation and subject to inspection under a permit. Compared to the costs associated with obtaining a phytosanitary certificate, shipping costs, which will be discussed in the following paragraphs, should not be a burden on importers of small lots of seed and should not be appreciably more than shipping costs importers must already pay in order to import seeds from overseas suppliers.

Shipping Costs

As discussed earlier, the importer would be responsible for transportation costs from the overseas seed supplier to the PPQ plant inspection station and the costs of shipping the seed from the plant inspection station to the importer's address. APHIS-PPQ has estimated shipping costs for importers of small lots of seed using a worst case scenario of a shipment of 50 packets of 50 corn seeds per packet (the maximum shipment size that would be allowed under the proposed provisions), which would weigh less than 2 pounds. Currently, this shipment would cost $4.49 for parcel post and $5.75 for priority mail to ship the seeds from the inspection station at Beltsville, MD, to the farthest destination within the United States. Corn seed was used in this example because it is considerably heavier than most ornamental seed, which is the type expected to be shipped. Shipping costs for smaller, lightweight seeds would be much less than those in the example.

Currently, importers who import commodities that require inspection, such as would be the case with small lots of seed, cover the costs of shipping the commodity from the plant inspection station to the importer's address, using one of two options: (1) Provide a shipping container and the estimated amount of postage necessary to the overseas supplier who would then send it along with the shipment to the plant inspection station, or (2) provide an account number for the United States Postal Service or for a commercial shipping service to be charged by the inspectors at the plant inspection station.

In general, the shipping costs incurred by importers of small lots of seed as a result of these proposed changes would be much less than the costs of obtaining a phytosanitary certificate as required under the current regulations, which, as noted previously, vary by country but can be as much as $100 or more and can be equal to several times the value of the commodity itself. These proposed changes are expected to decrease the current economic burden on importers of small lots of seed.

Impact on Small Entities

The Small Business Administration (SBA) has established size standards based on the North American Industry Classification System (NAICS) to determine and to classify which economic entities can be considered small entities. The SBA classifies seed companies (NAICS 422910)[3] as small if they employ 100 or fewer workers. There are close to 900 seed companies that are involved in certified seed trade (domestic and international) in the United States. About 97 percent of these companies would be considered small by SBA standards. In addition, groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, donate, and import small lots of seeds. The size of these entities is difficult to determine, and the exact number of seed importers is not known. The proposed rule would primarily affect those entities who import small lots of seed. Based on information that we have received from several horticultural societies and from various individuals and small businesses that currently import small lots of seed, we expect approximately 2,000 import permit applications over the first 5 years, so approximately 400 import permit applications are expected per year.

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

[3] U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–119–1. Please send a copy of your comments to: (1) Docket No. 02–119–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The changes proposed in this document would allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to requiring a phytosanitary certificate. Implementation of this proposed rule would require us to engage in certain information collection activities, in that entities wishing to import small lots of seed would be required to apply for a permit and to provide certain information. We are soliciting comments from the public (as

well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Importers, horticultural societies, arboreta, and small businesses.

Estimated annual number of respondents: 400.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 400.

Estimated total annual burden on respondents: 64 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37–3 would be amended as follows:

a. In paragraph (a)(15), by removing the word "and" at the end of the paragraph.

b. In paragraph (a)(16), by removing the period at the end of the paragraph and adding a semicolon in its place.

c. In paragraph (a)(17), by removing the period at the end of the paragraph and adding the word "; and" in its place.

d. By adding a new paragraph (a)(18) to read as set forth below.

§ 319.37–3 Permits.

(a) * * *

(18) Small lots of seed imported in accordance with § 319.37–4(d) of this subpart.

* * * * *

3. Section 319.37–4 would be amended as follows:

a. In paragraph (a), by removing the word "Any" and adding the words "Except for small lots of seed imported in accordance with paragraph (d) of this section, any" in its place.

b. By adding a new paragraph (d) to read as set forth below.

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

* * * * *

(d) *Small lots of seed.* Lots of seed may be imported without a phytosanitary certificate required by paragraph (a) of this section under the following conditions:

(1) The importation of the seed is authorized by a written permit issued in accordance with § 319.37–3.

(2) The seed is not of any prohibited genera listed in § 319.37–2; is not of any noxious weed species listed in part 360 of this chapter; does not require an additional declaration on a phytosanitary certificate in accordance with § 319.37–5; does not require treatment in accordance with § 319.37–6; and is eligible for importation under the regulations listed in parts 330 and 361 of this chapter.

(3) The seed meets the following packaging and shipping requirements:

(i) Each seed packet is clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level;

(ii) There are a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet;

(iii) There are a maximum of 50 seed packets per shipment;

(iv) The seeds are free from pesticides;

(v) The seed packets are in gas permeable packages;

(vi) The shipment is free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, mites; and

(vii) At the time of importation, the shipment is sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a port of entry listed in § 319.37–14(b) and designated by an asterisk.

Done in Washington, DC, this 23rd day of April, 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–9716 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes. This proposal would require installing a lightning bonding jumper from the lower rotating beacon to the airframe. This action is necessary to prevent possible multiple avionics failures caused by a lightning strike, which could reduce the ability of the flightcrew to control the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2004–NM–48–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that an operator reported damage to several components of the electrical system due to a lightning strike on the fuselage. Investigation revealed the root cause to be insufficient lightning bonding at the lower rotating beacon. This condition, if not corrected, could result in multiple avionics failures due to a lightning strike and reduce the ability of the flightcrew to control the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–33–0037, dated November 5, 2003, which describes procedures for installing a lightning bonding jumper from the lower rotating beacon to the airframe. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2004–01–06, dated February 5, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil 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. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Foreign AD

The DAC states that Brazilian airworthiness directive 2004–01–06, dated February 5, 2004, is applicable to "all EMB–120 aircraft models in operation." However, this does not agree with EMBRAER Service Bulletin 120–33–0037, dated November 5, 2003, which states that only certain EMB–120 airplanes are affected and identifies them by serial number. This proposed AD would be applicable only to the airplanes listed in the service bulletin, which is acceptable to the DAC.

Cost Impact

The FAA estimates that 217 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $134 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $71,393, or $329 per airplane.

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

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2004–NM–48–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120004, and 120006 through 120359 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible multiple avionics failures caused by a lightning strike, which could reduce the ability of the flightcrew to control the airplane, accomplish the following:

Installation

(a) Within 4,000 flight hours or 30 months after the effective date of this AD, whichever comes first, install a lightning bonding jumper from the lower rotating beacon to the airframe in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–33–0037, dated November 5, 2003.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2004–01–06, dated February 5, 2004.

Issued in Renton, Washington, on April 19, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9765 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes. This proposal would require a one-time detailed inspection of the wing flap actuators for proper bonding of the flap actuator fairings to the lower skin of the wings, and related corrective or preventative actions. These actions are necessary to prevent possible damage to adjacent structural elements (such as the horizontal stabilizer) caused by separation of the flap actuator fairings from the wing lower skin, which could result in reduced controllability of the airplane. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by June 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–325–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–325–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes. The CAAI advises that several cases of adhesive separation of the flap actuator fairings from the lower skin of the wings have been reported. This condition, if not corrected, could result in possible damage to adjacent structural elements (such as the horizontal stabilizer), which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Gulfstream Aerospace LP has issued Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002, which describes procedures for a one-time detailed inspection of the wing flap actuators for proper bonding of the flap actuator fairings to the lower skin of the wings. Related corrective or preventative actions, as applicable, include initial reinforcement of the adhesive of the actuator fairings; and removal and reattachment of the fairings to the lower skin of the wings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 57–02–10–15, dated October 31, 2002, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the referenced service bulletin describes procedures for reporting compliance with the service bulletin to the manufacturer, this proposed AD would not require that action. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would be supplied free of charge by the manufacturer. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $50,700, or $845 per airplane.

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

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket 2002–NM–325–AD.

Applicability: Model Galaxy and Model Gulfstream 200 airplanes, serial numbers 004 through 074 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible separation of the flap actuator fairings from the wing lower skin from causing damage to adjacent structural elements (such as the horizontal stabilizer), which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 30 flight hours or 5 flight cycles after the effective date of this AD, whichever occurs earlier, perform a one-time detailed inspection of the wing flap actuators for proper bonding of the flap actuator fairings to the lower skin of the wings; in accordance with Part A of the Accomplishment Instructions of Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002.

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

Reinforcement of Actuator Fairing Adhesive

(b) If the inspection required by paragraph (a) of this AD reveals either no separation or separation of the flap actuator fairings from the lower skin of the wings that is within the limits specified in Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, Revision 1, dated November 7, 2002, do paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, apply sealant around the edges of the fairings, in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Within 300 flight hours after performing paragraph (b)(1) of this AD, remove and reattach the flap actuator fairings in accordance with Part B of the Accomplishment Instructions of the service bulletin.

Removal and Reattachment of Actuator Fairings

(c) If the inspection required by paragraph (a) of this AD reveals separation of the flap actuator fairings from the lower skin of the wings that is outside the limits specified in Gulfstream Aerospace LP Alert Service Bulletin 200–57A161, Revision 1, dated November 7, 2002: Prior to further flight, remove and reattach the flap actuator fairings in accordance with Part B of the Accomplishment Instructions of the service bulletin.

Actions Accomplished Per Previous Issue of Service Bulletin

(d) Actions accomplished before the effective date of this AD per Gulfstream Aerospace LP Alert Service Bulletin 200–57A–161, dated November 5, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Reporting Requirements

(e) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Israeli airworthiness directive AD 57–02–10–15, dated October 31, 2002.

Issued in Renton, Washington, on April 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9764 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 59

[Docket No. 2002N–0085]

RIN 0910–AB96

Requirements Pertaining to Sampling Services and Private Laboratories Used in Connection With Imported Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing new regulations for persons who use sampling services (services that collect samples for another party) and private laboratories used in connection with imported food. The proposal would require samples to be properly identified, collected, and maintained. Additionally, the proposal would require laboratories to use validated or recognized analytical methods, and to submit analytical results directly to FDA. The proposal is intended to help assure the integrity and scientific validity of data and results submitted to FDA.

DATES: Submit written or electronic comments by July 28, 2004. Submit written or electronic comments on the information collection provisions by June 1, 2004. See section VIII of this document for the proposed effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. 2002N–0085, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2002N–0085 and RIN number 0910–AB96 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Persons who import food products into the United States often use private laboratories to test their food imports and submit the results of such tests to FDA. For example, FDA may refuse admission of an imported food into the United States if the food appears to be adulterated or misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the act). Pending a decision to refuse admission, the owner or consignee of the imported article may wish to present evidence to show that

the product does not violate the act or may wish to apply for authorization to recondition the imported food to bring it into compliance with the act. The owner or consignee may hire a sampling service to collect statistically representative samples for testing and hire a private laboratory to test the food. The private laboratory can then run tests designed to show whether the imported food complies with the act. The private laboratory would report the test results either to the owner or consignee or to FDA directly. FDA, in turn, would evaluate the analytical data to determine whether the imported food complies with the act and can be released into the United States.

Thus, private laboratories can play an important role in demonstrating that imported food products comply with laws and regulations administered by FDA. In doing so, the private laboratories help ensure that imported food products reaching consumers meet FDA requirements and help prevent noncompliant or violative products from entering the market. Additionally, when firms use private laboratories that produce reliable test results, FDA's laboratory resources can be devoted to other regulatory matters.

FDA estimates that importers have used over 100 separate private laboratories to generate analytical data for submission to FDA. These submissions go to FDA offices throughout the United States, and questions have arisen regarding the coordination of FDA and private laboratory services. In 1996, FDA held several "grassroots" meetings in Brooklyn, NY, Orlando, FL, Houston, TX, and Oakland, CA, to discuss how FDA might improve its policies and procedures relating to the use of private laboratories and establish a uniform, systematic, and effective approach to assure that private laboratories conducting tests on FDA-regulated products submit scientifically sound data (see Food and Drug Administration, "Private Laboratory Grassroots Meetings 1996" (available on the Internet at *http://www.fda.gov*, in the "ORA" section, "Scientific References" directory)). The grassroots meetings resulted in an action plan which suggested, among other things, that FDA:

1. Establish consistent, and objective national standards for the format and content of analytical data that private laboratories submit to FDA;

2. Require independent sampling so that FDA may be assured that samples collected and tested by private laboratories are truly representative of a lot or shipment and are collected properly to ensure the integrity of any samples that were collected for testing; and

3. Require private laboratories to report analytical results directly to FDA to assure that the results are reported fairly. Even though some participants supported reporting results to FDA directly, other participants stated that sampling results should be sent to the private laboratory's "client" first or that direct reporting to FDA would not provide any assurance regarding the private laboratory's competency.

The agency also indicated that it would consider how laboratory accreditation might affect its relationship with private laboratories. Participants at several meetings supported an accreditation concept, but did not agree on the accreditation body. Some participants suggested that FDA or other entities should establish an accreditation process that complies with the International Organization for Standardization (ISO)/International Electrochemical Commissioner (IEC) Guide 58 ("Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition") procedures. Others suggested laboratories be accredited using ISO/IEC Guide 25 ("General Requirements for the Competence of Calibration and Testing Laboratories"), which has since been replaced by ISO/IEC 17025, "General Requirements for the Competence of Testing and Calibration Laboratories". FDA is aware of other ISO/IEC guides, such as ISO/IEC Guide 61 ("General Requirements for the Assessment and Accreditation of Certification/Registration Bodies") that might be used. Other participants mentioned using the National Environmental Laboratory Accreditation Conference, using validation programs from the Association of Official Analytical Chemists (AOAC), or having FDA set up a separate accrediting system.

Additionally, in 1998, the Senate Governmental Affairs Committee's Permanent Investigations Subcommittee held hearings on the safety of food imports. The committee heard testimony about various methods used to avoid food safety inspections and to introduce adulterated food into the United States. These methods included substituting clean food samples for the adulterated food import and testing multiple food samples until a sample meets FDA's approval (see "The Safety of Food Imports: Fraud & Deception in the Food Import Process; Hearings Before the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations," September 10, 1998 (statement of "Former Customs Broker"); see also "The Safety of Food Imports; Hearings Before the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations," May 14, 1998 (statement of Reggie Jang)).

On July 3, 1999, then-President Clinton issued a memorandum on the safety of imported foods. The memorandum identified food safety as a high priority and directed the Secretary of Health and Human Services and the Secretary of the Treasury, among other things, to take all actions available to "set standards for private laboratories for the collection and analysis of samples of imported food for the purpose of gaining entry into the United States." Subsequently, FDA and the U.S. Customs Service (Customs Service) held two public meetings on imported food safety. These meetings, during which interested persons could comment on the issues identified by FDA, including the private laboratories initiative, were held on February 10, 2000, in Los Angeles, CA, and on February 17, 2000, in Washington, DC. FDA addresses comments from those meetings later in this document.

More recently, President Bush strongly supported efforts at FDA and other health agencies to respond to and treat potential bioterrorism attacks. The administration identified improving food safety, particularly in relation to imported food, as a key goal.

In March 2003, the administration launched Operation Liberty Shield, a comprehensive national plan designed to increase protections for American citizens and infrastructure while maintaining the free flow of goods and people across the nation's border with minimal disruption to the economy and American way of life. One component of Operation Liberty Shield involves increased food security, including enhanced inspection of imported food. This proposed rule complements efforts to enhance inspection of imported food by helping assure the integrity and scientific validity of data and results submitted to FDA concerning imported food. Furthermore, Homeland Security Presidential Directive HSPD–9 directs Federal agencies to "develop nationwide laboratory networks for food, veterinary, plant health, and water quality that integrate existing Federal and State laboratory resources, are interconnected, and utilize standardized diagnostic protocols and procedures." In developing the final rule, FDA will coordinate with other Federal agencies to ensure that the protocols and procedures required for private

laboratories fit appropriately within this framework.

This proposed rule would codify the requirements for sampling services and private laboratories used in connection with imported food. By doing so, the proposed rule would help deter the importation of unsafe food.

II. Description of the Proposed Rule

The proposal would add in title 21 CFR a new part 59 entitled "Requirements Pertaining to Sampling Services and Private Laboratories Used in Connection With Imported Food." The proposal would create four subparts. Subpart A of proposed part 59 would contain general information, such as scope and definitions. Subpart B of proposed part 59 would describe the obligations of persons who use private laboratories to submit data to FDA. Subpart C of proposed part 59 would establish requirements for sampling services. Subpart D of proposed part 59 would establish requirements for private laboratories.

A. Proposed Subpart A—General Information

1. Who Is Subject to This Part? (Proposed § 59.1)

Proposed subpart A of part 59 would consist of two provisions. Proposed § 59.1 would describe the rule's scope and state that proposed part 59 applies if you:

- Use a sampling service to collect samples of an imported food in connection with an FDA enforcement action; or
- Use a private laboratory to collect, analyze, or test samples of an imported food in connection with an FDA enforcement action.

The proposal would explain that FDA enforcement actions would include, but not be limited to, product seizure, refusal of imports, or the issuance of an injunction.

You would also be subject to part 59 if you are a sampling service or a private laboratory and you have been hired or retained to collect, test, and/or analyze an imported food in connection with an FDA enforcement action. For example, if you are a private laboratory, and an importer wants you to test an imported food and to use your test results to ask FDA to allow the imported food into the United States, you would be subject to part 59. In contrast, if an importer wants you to test an imported food to determine whether a food meets other Federal requirements (i.e., requirements not administered by FDA or standards that are not involved in an FDA enforcement action), part 59 would not apply to you because no FDA enforcement action is involved.

You should also note that, if you are a private laboratory that collects its own samples in connection with an FDA enforcement action, you would be subject to the requirements for sampling services, in addition to the requirements for private laboratory analysis.

2. What Definitions Apply? (Proposed § 59.3)

Proposed § 59.3 would define three terms.

Proposed § 59.3(a) would define FDA as the U.S. Food and Drug Administration.

Proposed § 59.3(b) would define "private laboratory" as an independent person who analyzes or tests samples of imported food. Please note that section 201(e) of the act (21 U.S.C. 321), in turn, defines "person" as including individuals, partnerships, corporations, and associations.

Proposed § 59.3(c) would define a "sampling service" as an independent person who collects samples of an imported food. The definition would explain that sample collection may include collecting samples from lots of imported food in conformance with FDA-recommended sampling procedures and schedules (see, e.g., Food and Drug Administration, *Investigations Operations Manual*, ch. 4—Sampling (January 1999)).

As stated earlier, you should note that a private laboratory may also be a "sampling service" if the private laboratory collects its own samples for testing or analysis in connection with an FDA enforcement action. In other words, a private laboratory that acts as a sampling service would be subject to the requirements for sampling services in addition to the requirements for private laboratories.

B. Proposed Subpart B—Requirements for Persons Using Private Laboratories and Sampling Services in Connection With Imported Food

Proposed subpart B of part 59 would describe the requirements for persons who use private laboratories and sampling services in connection with imported food.

1. What Requirements Apply if You Use Sampling Services? (Proposed § 59.101)

Under proposed § 59.101, if you intend to use a sampling service to collect samples of an imported food in connection with an FDA enforcement action, you must:

- Notify the FDA district office that is reviewing the entry of the imported food of your intent to use a sampling service. Your notification must include the name and address for each sampling service you intend to use, each sampling service's qualifications and knowledge of sampling procedures, a primary contact (name and phone number) for each sampling service, the address where the sampling records will be maintained, and the reason(s) why the food is being sampled;
- Give to each sampling service the Customs Service entry number, FDA entry line number (if applicable or available), the location of the lot that will be sampled, sufficient information to identify the lot to be sampled, and the name and address of the private laboratory that will test the sample;
- Not influence or interfere with the manner and process in which samples are collected. For example, you should not prevent the sampling service from collecting the samples itself, dictate how samples are collected, or restrict the sampling service's ability to obtain a representative sample from the imported food; and
- Maintain control of the lot from which the sample was taken until FDA notifies you that you can release the lot or take other action on the lot.

2. What Requirements Apply if You Use Private Laboratories? (Proposed § 59.103)

Under proposed § 59.103, if you use a private laboratory to test or analyze samples of an imported food in connection with an FDA enforcement action, you must:

- Notify the FDA district office that is reviewing the entry of the imported food of your intent to use a private laboratory and to have the private laboratory submit the results and supporting data to FDA. Your notification must include the private laboratory's name and address, its qualifications, a primary contact (name and phone number), the address where the test will be conducted (if different from the private laboratory's address), and the reason(s) why the product is being tested or analyzed;
- If the private laboratory will obtain the sample for testing, give to the private laboratory the Customs Service entry number and FDA entry line number (if applicable or available);
- Not influence or interfere with the manner and process in which samples are tested and/or analyzed. For example, you should not tell the private laboratory how it should test the samples or which piece of equipment to use;
- Maintain control of the lot from which the sample was taken until FDA

notifies you that you can release the lot or take other action on the lot; and

• If more than one private laboratory is or will be conducting tests, notify all private laboratories involved and FDA. The notice must state how many private laboratories are conducting or will conduct tests or analyses and describe those tests or analyses.

Proposed §§ 59.101 and 59.103 are intended to notify FDA about any sampling service or private laboratory that will be used in connection with an imported food and to enable those parties to perform their tasks effectively and independently. They are also intended to deter manipulation, alteration, or substitution of the samples that a private laboratory will test or selective reporting of a private laboratory's results. A 1998 Senate hearing on the safety of food imports noted these types of abuse when a former customs broker testified that some unscrupulous importers attempt to deceive FDA by selecting samples that may not be from the correct shipment or by submitting multiple samples to a private laboratory for testing until they obtain a sample that will comply with the act and reporting only the successful test (see "The Safety of Food Imports: Fraud & Deception in the Food Import Process; Hearings Before the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations," September 10, 1998 (statement of "Former Customs Broker")).

FDA considered whether to require all importers who analyze their products to use independent sampling services. Such a requirement could help ensure that samples are not manipulated, altered, or substituted during the sampling process, but could be unfair to those importers who sample their own imported food in a legitimate manner. FDA, therefore, invites comment on whether this rule should require the use of independent sampling services.

3. What Requirements Apply if You Collect Your Own Samples? (Proposed § 59.105)

Proposed § 59.105 would apply if you collect samples of your own imported food and intend to have them tested or analyzed in connection with an FDA enforcement action. In brief, the proposal would require you to adhere to the same requirements that a sampling service must observe. The requirements for sampling services, which are described in more detail in the following discussion of proposed § 59.201, are intended to ensure that samples are correctly identified, collected, and maintained. These requirements also should help deter unscrupulous food importers from attempting to manipulate samples or to substitute foods that are known to be in compliance with the act for a possibly adulterated or misbranded imported food.

C. Proposed Subpart C—Requirements for Sampling Services

What Are the Requirements for Collecting, Identifying, and Maintaining Samples? (Proposed § 59.201)

Proposed subpart C of part 59 would describe the requirements for sampling services. In brief, if you are a sampling service who is subject to the rule, proposed § 59.201(a) would require you to perform the following operations independently:

• Verify the location, identity, and size of the lot to be sampled;

• Collect samples following established procedures that ensure the sample's integrity, accuracy, and representational nature;

• Ensure the integrity of the sample after the sample is collected. You can do this by including proper identification to avoid mixups between samples, avoiding contamination of the sample and the lot to be sampled, maintaining sterility or appropriate temperatures, or taking other measures to protect the sample's integrity;

• Identify all containers from which samples are collected. You can do this by placing the FDA entry line number or Customs Service entry number on the sample container that is to be shipped to the private laboratory and also by identifying the container from which the sample was collected;

• Complete a sample collection report for each sample collected. The proposal would require that the sample collection report, at a minimum, document sample collection methods and sample preparation techniques; and

• Prepare and ship the sample, using precautions where necessary to prevent contamination, to maintain the sample's integrity, or to maintain sterility or appropriate temperatures, and ship the original sample collection report directly to the private laboratory.

These provisions are intended to ensure that you properly collect, identify, and maintain samples from the time you collect the sample until the time you deliver the sample to a private laboratory. Additionally, by using the word "independently," the proposed rule would have you perform these sampling operations without interference from or assistance by the person who retained your services. If you are collecting samples and are employed by the person who owns or imported the food (as allowed by proposed § 59.105), the word "independently" indicates that you should perform the sampling operations free from coercion or undue interference from your employer. For example, you should determine how samples are to be collected, the methods to be employed, and the quantity to be collected; your employer should not dictate how you will collect samples or provide the samples to you.

If you are a sampling service who is subject to the rule, proposed § 59.201(b) would require you to retain records documenting your compliance with proposed § 59.201(a). These records would include documents showing how you identified, collected, and maintained the sample. You may choose either to follow an FDA procedure for sampling, for example, those published in FDA's investigations operations manual, or any other applicable procedure that ensures the integrity, accuracy, and representational nature of the sample. If you collect samples under an established, non-FDA procedure, the proposal would require you to retain records concerning that procedure. You could do this either by retaining the procedure itself or records referring to the specific procedure if the procedure is publicly available. If you collect samples under an FDA sampling procedure, you can omit the FDA sampling procedure from your records, but you should keep notes to show which FDA sampling procedure you used. The proposal would require you to retain these records for 3 years after you have sent the sample collection report to the private laboratory and to make the records available to FDA, upon request, for inspection and copying.

D. Proposed Subpart D—Requirements for Private Laboratories

Proposed subpart D of part 59 would pertain to private laboratories and would consist of two provisions.

In drafting this proposed rule, FDA carefully considered whether to require private laboratories subject to proposed part 59 to be accredited. Accreditation would show that the private laboratory is competent to perform specific tasks, but would not, by itself, guarantee that a private laboratory's test or analytical results are correct or that it performed the tests or analyses correctly. Nevertheless, accreditation could increase confidence in the private laboratory's results.

The agency also considered whether the accreditation would have to operate in conformance with ISO/IEC 17025 or

with any other specific standard. Both FDA and the Customs Service heard comments at the public meetings that supported requiring accreditation of private laboratories, but some comments wanted less FDA oversight or fewer FDA inspections in exchange for accreditation. FDA also examined accreditation costs and the time required to go through an accreditation process.

Given these considerations, FDA decided to omit a laboratory accreditation requirement from the proposed rule. While the agency strongly encourages laboratories to become accredited, questions about the accreditation standard to be used, how FDA would ensure that the accrediting body is a recognized or competent accrediting body, and other issues suggest that it would be premature for FDA to propose requiring private laboratories to be accredited. The agency invites comment on this subject.

1. What Requirements Pertain to Analyzing Samples, Preparing Analytical Reports, and Maintaining Records? (Proposed § 59.301)

If you are a private laboratory subject to the rule, proposed § 59.301 would require you to observe certain requirements when handling or testing samples, preparing analytical reports, or maintaining records. In brief, proposed § 59.301(a) would require you to:

- Verify that the sample received corresponds to the sample described on the sample collection report. You can do this by identifying the sample by the Customs Service entry number and FDA entry line number (if applicable or available) or other appropriate identifying information in the sample collection report, and by documenting the conditions under which the sample was received (e.g., measures taken to prevent contamination, to maintain the integrity of the sample, or to maintain sterility or appropriate temperatures);
- Confirm the reasons for analyzing the sample;
- Use appropriately validated or recognized analytical procedures to analyze the sample, including the creation and maintenance of a reserve portion of a composite sample; and
- Prepare an analytical report for submission with the original sample collection report and complete analytical package. The proposal would require the analytical package to: (1) Describe the analytical methods used, (2) include an original compilation of all data and corresponding quality control results supporting the test, (3) include reagent blank and spike recovery data, (4) describe instrumental conditions and parameters, (5) include the analysts' signatures, and (6) include calculations. The proposal would also require the analytical report to contain a certificate of analysis.

Proposed § 59.301(b) would require you to provide, as part of your analytical package, an affidavit stating that:

- The analytical package pertains to the only test(s) done on the lot or product and that you are not aware of any other tests being performed on the lot; or
- If you are aware of other tests being performed by other persons, the name and address of the person conducting the other tests. FDA is not proposing to require you to investigate whether other persons are conducting tests; you would only provide this information if you are aware of other tests being performed by other persons.

Proposed § 59.301(c) would require you to submit the analytical package and the original sample collection report to the FDA district office that is reviewing the entry of the imported food. Additionally, it would require you to maintain records relating to proposed § 59.301 for 3 years after you submitted the analytical package and original sample collection report to FDA, and, upon request, to make records available to FDA for inspection and copying.

These provisions are intended to ensure that, if you submit analytical packages to FDA, you have analyzed the correct sample, used appropriate analytical or testing methods, and acted independently. Furthermore, by requiring you to send the analytical package and sample collection report directly to FDA, the proposal would increase the agency's confidence that the analytical package accurately represents the private laboratory's findings. FDA notes that the proposal would not preclude you from sending a duplicate copy of the analytical package to the person who retained your services. FDA is leaving these arrangements up to you and those who retain your services.

2. What Are the Requirements for Private Laboratories Collecting Samples? (Proposed § 59.303)

FDA recognizes that many private laboratories may prefer to collect samples themselves. Thus, to ensure that these private laboratories observe the same requirements that would be placed on sampling services, proposed § 59.303 would state that, if you are a private laboratory who collects samples of imported food in connection with an FDA enforcement action, you must comply with the sampling service requirements contained in proposed subpart C ("Requirements for Sampling Services").

III. Public Meeting Comments and Responses

As stated earlier, FDA and the Customs Service held two public meetings on February 10, 2000, in Los Angeles, CA, and on February 17, 2000, in Washington, DC, to discuss issues related to the safety of imported food. Several comments focused on the private laboratories issue. Those comments and FDA's responses are addressed in this section. To make it easier to identify comments and FDA's responses to the comments, the word "Comment" will appear before the description of the comment, and the word "Response" will appear before FDA's response. FDA also has numbered each comment to make it easier to identify a particular comment. The numerical value assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was submitted.

(Comment 1) Some comments said that FDA should expand the rule to cover all private laboratories dealing with any FDA-regulated product instead of limiting the rule to private laboratories involved with imported food.

(Response) While the concepts and principles expressed in the proposed rule may be relevant to private laboratories dealing with FDA-regulated products other than imported food products, FDA has elected to focus on private laboratories involved with imported food. This focus corresponds to concerns regarding the safety of imported food. Additionally, FDA is not aware of any significant problems associated with private laboratories that test or analyze other FDA-regulated products other than imported food products.

(Comment 2) Several comments stated that, if FDA intends to regulate private laboratories and to require laboratory accreditation, FDA should accept the results from those laboratories and either reduce (if not eliminate) its oversight of private laboratories or let those private laboratories act in FDA's place. Some comments argued that private laboratories are able to conduct tests more quickly than FDA's laboratories and reach results that are as good as, if not superior to, FDA's laboratory results.

(Response) The proposed rule does not require laboratories to be accredited. FDA also declines to draft the rule to allow private laboratories to act in FDA's place. Under section 801 of the

act (21 U.S.C. 381), FDA, rather than the importer or a private laboratory retained by the importer, has the responsibility for deciding whether an imported article complies with the act.

(Comment 3) One comment urged FDA to accredit private laboratories itself. The comment stated that only FDA has the necessary experience to judge the adequacy of private laboratory facilities and the competency of their analysts. The comment asked FDA to publish accreditation requirements and create an appeals process, but also said that FDA must absorb accreditation costs itself in order to avoid any burden on small businesses. The comment said a "user fee" on all FDA-regulated imports could defray FDA's accreditation costs.

(Response) FDA lacks explicit statutory authority to impose "user fees" for this purpose and also lacks the resources that would be necessary to implement and operate an accreditation program for private laboratories. Consequently, FDA declines to adopt the comment's suggestions.

(Comment 4) Some comments asked FDA to "accredit," "approve," or license sampling services. The comments explained that private laboratories should not be held accountable for samples collected by other parties and that the reliability of a private laboratory's results depends largely on the sample being tested. A few comments said that FDA should charge sampling services as part of any accreditation, approval, or licensing program. Other comments suggested that some entity (not necessarily FDA) accredit sampling services.

(Response) FDA recognizes the value in ensuring that sampling services are capable of performing their tasks in a competent manner. However, FDA is unaware of any accreditation system for sampling services, and resource limitations prevent FDA from "approving" or licensing sampling services itself or establishing an accreditation, approval, or licensing system for private laboratories.

(Comment 5) One comment sought a governmentwide certification process so that laboratory results would be accepted by all Federal Government agencies. The comment noted that other Federal agencies have certification programs and receive fees for such certifications.

(Response) The proposed rule focuses on importers, sampling services, and private laboratories involved with imported food. A broader initiative would require input across a broad range of agencies. A need for the broader initiative has not yet been demonstrated. The issue of a governmentwide certification program is outside the scope of this proposed rule.

(Comment 6) One comment argued that requiring importers to notify FDA if they intend to use a sampling service or a private laboratory has no benefit. Another comment mistakenly construed the notice as requiring FDA approval before a sampling service or private laboratory began work.

(Response) The notices to FDA in proposed §§ 59.101 and 59.103 are supposed to alert FDA that an importer intends to use a sampling service or a private laboratory in connection with an imported food. It would also enable FDA to check whether the sampling services and private laboratories identified in the notices are, in fact, the same sampling services and private laboratories that collect or test the samples. For example, if an importer notifies FDA that it intends to use private laboratories A, B, and C, but private laboratory X submits the analytical package to FDA, FDA may decide to look into the reasons why the importer used a different laboratory.

No prior FDA approval is necessary before the sampling service or private laboratory may begin work. The agency does not have the resources that would be needed for such an approval system and related matters (such as resolving disputes if the agency decided to not approve a particular sampling service or private laboratory).

(Comment 7) Several comments urged FDA to treat perishable goods differently from other food products. The comments said that delays in admitting perishable goods into the United States reduced their value or their potential value if FDA ultimately refuses admission. Another comment added that some goods have seasonal values so that their value rises or falls over time.

(Response) The proposed rule has no direct bearing on how quickly perishable or seasonal goods are sampled or analyzed or how they are admitted or refused admission into the United States. Consequently, the proposal treats all imported foods alike.

IV. Legal Authority

Several provisions of the act provide the legal authority for the proposed rule. In brief, section 402 of the act (21 U.S.C. 342) defines when a food is deemed adulterated, and section 403 of the act (21 U.S.C. 343) defines when a food is deemed misbranded. The act prohibits a number of actions concerning adulterated or misbranded food, including the introduction or delivery for introduction into interstate commerce of any adulterated or misbranded food. (See section 301 of the act (21 U.S.C. 331).) The act does, however, allow owners or consignees of imported products to seek FDA's permission to take actions to bring an otherwise violative imported food into compliance with the act. (See section 801(b) of the act (21 U.S.C. 381(b).)

The act also authorizes FDA to take various enforcement actions such as injunctions (see section 302 of the act (21 U.S.C. 332)), and seizures (see section 304 of the act (21 U.S.C. 334)).

To enforce these and other provisions of the act, the act authorizes FDA to conduct examinations and investigations (see section 702 of the act (21 U.S.C. 372)), to conduct factory inspections (see sections 704 and 706 of the act (21 U.S.C. 374 and 376)), and to examine and, where appropriate, to refuse admission to imported products (see section 801 of the act). The agency may also take samples for analysis, and, in the case of food samples, may impose "reasonable exceptions" and "reasonable terms and conditions" relating to the sample collection (see sections 702(b) and 801(a) of the act). Section 701(a) of the act further authorizes the agency to issue regulations for the efficient enforcement of the act, while section 701(b) of the act authorizes FDA and the Department of the Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the act.

Additionally, section 361 of the Public Health Service Act (the PHS Act) authorizes the agency to issue regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries (see 42 U.S.C. 264).

The proposed rule would apply where a person uses a sampling service and/or a private laboratory for an imported food when the sample is to be tested or analyzed in connection with an FDA enforcement action. The sampling service or the private laboratory will provide evidence that may help the agency determine whether the imported food is adulterated, misbranded, or otherwise violates the act or the PHS Act and whether FDA should permit the product to enter interstate commerce. Consequently, FDA must have some confidence and assurance that the sampling service and private laboratory are performing their tasks accurately and reliably. The proposed rule would, therefore, establish uniform requirements for sampling services and private laboratories. In doing so, the proposed rule would further promote the efficient enforcement of the act's

adulteration, misbranding, and prohibited acts provisions, as well as the act's provisions on imports, and inspections and examinations. The proposed rule would also be consistent with the PHS Act's provisions regarding protection against the spread of communicable disease because contaminated food products can spread certain communicable diseases.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(a) and (h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reporting and Recordkeeping Requirements Pertaining to Sampling Services and Private Laboratories Used in Connection With Imported Food

Description: The proposed rule would, in part, require persons who use sampling services and private laboratories in connection with imported food to notify FDA, to prepare sample collection reports, to keep records regarding sample collection, to prepare and submit analytical reports to FDA, and to prepare and sign an affidavit.

Description of Respondents: Businesses and individuals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
59.101	1,739	4.8	8,329	1	8,329
59.103	1,739	5.0	8,767	1	8,767
59.201(a)(4)	200	44	8,767	1	8,767
59.201(a)(5)	200	44	8,767	1	8,767
59.301(a)(4)	200	44	8,767	2	17,534
59.301(b)	200	44	8,767	0.5	4,384
Total					56,548

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
59.201(b)	200	44	8,767	1	8,767
59.301(c)	200	44	8,767	0.5	4,384
Total					13,151

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates on the number of food importers (as identified in a database) and the numbers of sampling services and private laboratories that currently submit information to the agency regarding imported food. In fiscal year (FY) 1999, there were 1,739 food importers, and approximately 100 private laboratories submitted analytical data concerning imported food products to FDA. The agency is unable to predict whether the proposed rule will lead to any changes in the number of private laboratories submitting data to FDA, but, for purposes of estimating the information collection burden for this proposal, will assume that 200 private laboratories (twice the number of private laboratories currently submitting data on imported food to FDA) will be affected.

As for sampling services, FDA notes that most private laboratories conduct their own sample collection operations and that there are few (perhaps 10) sampling services. However, because the proposed rule would require private laboratories that collect samples to adhere to the same requirements as sampling services, for those provisions involving a collection of information from sampling services, FDA has decided to count 95 percent of the private laboratories (190 private laboratories) as adhering to the sampling service requirements in addition to the 10 known sampling services, thus resulting in 200 sampling services.

To determine the information collection burden for proposed § 59.101, FDA assumed that all 1,739 food importers would be affected. FDA data for FY 1999 indicates that approximately 11,690 food imports were detained for safety reasons. If 75 percent of these shipments are sampled, this would lead to 8,767 samples. However, FDA's experience suggests that sampling rates vary; in some areas, importers do very little sampling themselves and, instead, use sampling services. As described in section VII of this document, and for purposes of this information collection estimate, FDA will assume that importers will perform

only 5 to 20 percent of the sample collection themselves, so that, at most, 8,329 shipments (95 percent of 8,767 shipments) would be sampled by sampling services. This, in turn, would result in a response frequency of approximately 4.8 shipments per importer (8,329 shipments/1,739 food importers = 4.789 shipments/importer, rounded up to 4.8) and 8,329 sampling service notifications to FDA under proposed § 59.101. Given the minimal nature of the information sought, FDA estimates that only 1 hour would be needed to complete each notification.

For proposed § 59.103, FDA notes that not all food samples lead to laboratory analyses. In fiscal year 1999, FDA received 8,767 laboratory tests or analyses on imported food. Thus, for proposed § 59.103, the agency assumes that all 1,739 food importers may be affected and that 8,767 private laboratory notifications may result. The frequency of responses per importer, therefore, would be approximately 4.6 (8,767 notifications/1,739 importers = 5.04 notifications per importer). Again, given the minimal nature of the information sought, FDA estimates that only 1 hour would be needed to complete the notification.

For proposed § 59.201(a)(4), (a)(5), and (b), the agency, as explained earlier, estimates that 200 sampling services would be affected. Although sampling services have submitted reports to FDA as part of an analytical package for a submission from a private laboratory previous to this proposed rule, these submissions are not considered a "usual and customary business practice." Usual and customary business practices are not included in the burden calculated in the Paperwork Reduction Act Analysis. However, because the sampling reports are in response to government requirements, they are not considered usual and customary. Because proposed § 59.201 would, in essence, pertain to sample collection reports that are sent forward to private laboratories (as opposed to reports of all samples) and because FDA receives approximately 8,767 laboratory tests or analyses on imported food annually, the agency estimates that the proposal would result in 8,767 sample collection reports and records each year, at a frequency of 44 sample collection reports per sampling service (8,767 tests/200 sampling services = 43.8 tests per sampling service, and each test should result in a sample collection report). While sample collection reports would be prepared and records would be kept regardless of the regulation (because the sampling service would document its procedures for the importer's or private laboratory's use), FDA cannot determine whether the proposal would require sampling services to devote additional time to such reports and records. Consequently, FDA has assigned 1 burden hour per identification of the containers from which samples are collected, 1 burden hour per sample collection report for reporting purposes, and 1 burden hour per sample collection report for recordkeeping purposes.

FDA estimates that 200 private laboratories would be subject to the information collection requirements in proposed § 59.301(a)(4), (b), and (c). Because FDA currently receives approximately 8,767 laboratory reports annually, the agency estimates that the proposal would result in preparation, submission, and recordkeeping of 8,767 analytical packages and affidavits each year, at a frequency of approximately 44 packages and affidavits per private laboratory (8,767 laboratory reports/200 private laboratories = 43.8 laboratory reports per private laboratory, with each report resulting in an analytical package and affidavit). The analytical packages submitted by private laboratories are also not considered usual and customary business practices, because they are in response to government requirements. They are also included in the estimate of paperwork burden. The analytical packages described in the proposed rule are similar to analytical packages currently submitted to FDA, so the agency has assigned only 1 burden hour for the preparation of each analytical package (proposed § 59.301(a)(4)) and another burden hour for recordkeeping purposes (proposed § 59.301(c)). As for the affidavit described in proposed § 59.301(b), the information sought in the affidavit does not require a person to conduct any investigations, research, or examinations in order to complete the affidavit, so FDA has assigned 30 minutes for each affidavit.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to submit comments regarding information collection to OMB (see **ADDRESSES** and **DATES**).

VII. Analysis of Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is a significant regulatory action as defined by the Executive order and so is subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because most food importers are small businesses, the proposal could have a significant economic impact on a substantial number of small entities. The agency's Regulatory Flexibility Act analysis appears later in section VII.F of this document.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). As discussed later in section VII.G of this document, FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

B. Need for the Regulation

Current policies for sampling services and private laboratories do not create sufficient safeguards to prevent importers testing into compliance, which is testing multiple samples from a shipment and submitting only those results that will allow the shipment to enter the United States, or banking samples, which is retaining samples from a previous, acceptable shipment and submitting these samples instead of samples from the shipment that should be tested. Both of these activities permit importers to market adulterated or misbranded foods in the United States, representing a health hazard for American consumers.

Also, there is a lack of consistency in standards for sampling services and private laboratories across districts. Currently, ch. 21 entitled "Guidance on the Review of Analytical Data," *FDA Laboratory Procedures Manual* lays out guidance for importers and their agents.

Although this guidance provides important information for importers, it is not sufficiently specific and may have contributed to a lack of consistency between districts. This lack of consistency creates barriers to entry for new private laboratories, inhibiting the competitiveness of the industry.

C. Regulatory Options

1. No New Regulatory Action

FDA can take no new regulatory action and rely on current guidance with enhanced enforcement to improve the quality of test submissions for food imports on detention without physical exam (DWPE). However, the current standards for sample collection do not provide safeguards against fraudulent sample collection. The lack of these safeguards makes ensuring appropriate sample collections difficult. Additionally, this will not correct the lack of consistency between districts in laboratory submission requirements.

2. Require the Use of Independent Sampling Services

One goal of the proposed rule is to aid in ensuring that representative samples from questionable shipments are tested correctly. Sampling by the importer creates the possibility that importers will control the composition of samples from their shipments. Requiring the use of an independent sampling service, which may be a third party or the private laboratory doing the testing, would decrease the opportunity for importers to cheat. Because FDA does not know how many importers deliberately take nonrepresentative samples, it is difficult to quantify the benefits, but the rule, if finalized, should reduce the number of violative shipments that enter the United States.

Requiring the use of an independent sampling service would only be costly for those importers who have not previously used independent sampling services. Therefore, the cost of this alternative depends on the number of importers not using independent sampling services. Currently, the number of importers that use independent sampling services varies between districts. Many districts, including Baltimore, Los Angeles, San Francisco, and Dallas, strongly encourage the use of an independent sampling service. In these districts, less than 1 percent of shipments are sampled by the importer. In other ports, such as New York, as much as 27 percent of shipments are sampled by the importer. The percentage of importers using a sampling service is clearly more than 1 percent, but probably less than 27 percent. A reasonable estimate of the percentage of all shipments that are sampled by the importer is between 5 percent and 20 percent.

In FY 1999, approximately 11,690 food shipments were detained without physical exam for reasons that may have led to a laboratory analysis. If 75 percent of the shipments were sampled, 8,767 shipments would have required the taking of a sample by the importer or an independent sampling service. The additional number of shipments that would be independently sampled would be between 438 (5 percent sampled by the importer) and 1,753 (20 percent sampled by the importer) in FY 1999.

The time required to sample a shipment depends on the reason for detention. Using the Office of Regulatory Affairs' workplan and the expertise of former field personnel, FDA estimated the time to sample shipments for different violations. Estimates of sampling time ranged from 3 hours to sample seafood for decomposition to 30 minutes to sample for filth. The weighted average of the sampling times for all shipments that were detained without physical examination was 1.25 hours in FY 1999. A typical laboratory charges $65 an hour for sampling. However, an importer sampling his or her own goods would still have to pay a worker. The Bureau of Labor Statistics reports the average cost to the employer to hire a blue-collar worker in transportation and material moving is $17 an hour. The difference between $65 and $17 an hour would be the incremental hourly cost to the importer for independent sampling. At an average sampling time of 1.25 hours, the average shipment would cost $60 (1.25 x $48) more to be sampled by an independent sampling service. This additional cost would be borne by 438 to 1,753 shipments, giving a total annual cost between $26,280 (438 x $60) and $105,180 (1,753 x $60).

3. Require Lab Accreditation

Requiring lab accreditation would provide assurance that the private laboratories testing imported food have the appropriate equipment, personnel, and procedures to conduct their analyses. Improved performance by private laboratories should reduce the number of test results that falsely approve violative shipments. However, this benefit is mitigated by FDA's careful review of results submitted by private laboratories. During this review, FDA analysts are able to identify most incorrectly done analyses.

Requiring accreditation is currently subject to a number of difficulties. First, there are very few accrediting bodies qualified to accredit laboratories. Since a small percentage of private laboratories that submit results to FDA are currently accredited (10 to 15 percent of more than 100 private laboratories), the infrastructure to accredit unaccredited private laboratories does not currently exist. Second, the preferred accreditation standard is being changed from ISO/IEC Guide 25 to ISO/IEC Standard 17025. Laboratories and accreditors are in the process of adopting the new requirements, creating additional strain on the accreditation process. Third, accreditation is costly. The fees to an accrediting body would be at least $6,900 for the first year per private laboratory. This fee does not include the costs to the laboratory of actions needed to meet accreditation standards: Hiring additional personnel, training, proficiency testing, and quality assurance procedures. The additional costs would typically be much larger than the accreditation fees. These costs may be particularly prohibitive for very small labs (33 percent of private labs have fewer than five employees).

4. The Proposed Rule

The proposed rule would require food importers to prenotify FDA of their use of a sampling service or a private laboratory. It would also create requirements for sampling services collecting imported food samples and create requirements for private laboratories testing imported food samples and submitting laboratory reports to FDA.

D. Benefits of the Proposed Rule

1. Shortened Review Time

Review of a typical private laboratory test package requires, at most, 3 days by FDA (although most reviews occur within 1 to 2 days). If the package is found to be unacceptable, FDA contacts the laboratory or importer and attempts to reach a consensus about the test results, whether the problem is inappropriate or inaccurate analytical reports or dubious test results. This dialogue with the lab and importer can greatly increase the amount of time the imported food is held at the port. Creating more consistent requirements for laboratories will reduce the number and length of delays in reviewing analytical packages. Since shipments lose value while the analytical package is being reviewed, a benefit of this rule would be the gain in value of shipments due to the shortened review time. This benefit is difficult to quantify in dollar terms, due to variation in shipment value, perishability, and review times.

For some shipments, such as fresh produce, there is a considerable deterioration of shipment value associated with delay, so the benefits of shortened review will be considerable.

2. Reduced Potential Fraud by Importers

Fraudulent activities by food importers have been alleged in the General Accounting Office (GAO) Report "Food Safety: Federal Efforts to Ensure the Safety of Imported Foods are Inconsistent and Unreliable" (GAO/RCED–98–103) and "The Safety of Food Imports: Fraud & Deception in the Food Import Process; Hearings Before the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations," September 10, 1998 (statement of "Former Customs Broker"). These fraudulent activities include banking samples and testing into compliance. Both of these inappropriate activities would be more difficult for importers with required prenotification of private laboratory use and direct reporting of results to FDA.

Requiring importers to notify FDA of the private laboratory being used for testing before submission of the analytical package will discourage importers from using multiple laboratories to test samples and choosing the results most beneficial to their businesses. If the importer is required to notify FDA of the laboratory used before submitting samples to the laboratory, the importer is committed to using results from that laboratory. A secondary benefit of prenotification is improved communication between the private laboratory, the importer, and FDA, which may reduce review times.

Requiring the direct reporting of results from the lab to FDA would prevent importers from submitting multiple samples to a lab then choosing among the results for submission to FDA. It would also prevent importers from choosing not to submit results from violative shipments, ensuring that violative shipments will not be tested into compliance and admitted into the United States.

A secondary benefit to direct reporting would be improved enforcement of disposal of hazardous shipments and better tracking of shipments for removal from DWPE. Because FDA may recommend destruction of a shipment that poses a health hazard, the importer may not choose to report results showing that the shipment is a health hazard and instead take the shipment to another port. Also, the decision to remove an importer from DWPE is often affected by several (five or more) consecutive nonviolative shipments. If direct reporting is not required, the importer can choose not to submit results from any shipments that would disrupt the count of consecutive nonviolative shipments.

3. Health Benefits Resulting From a Reduction in Violative Food Entering the United States

It is difficult to determine how many violative shipments are admitted to the United States. Without knowing how many of these shipments are illegally admitted into the United States by importers banking samples or testing into compliance, FDA cannot quantify how much the proposed rule would reduce shipments of violative food admitted into the United States. However, the agency can quantify the costs of some of the illnesses that typically arise from consumption of violative imported foods.

Filth was the most common reason for detention in FY 1999. While filth itself may not pose a danger, it indicates that the food has been held in unsanitary conditions and so is at a higher risk for microbial contamination. Microbial contaminants such as *Salmonella* spp. and *Escherichia coli* O157:H7 can cause acute gastrointestinal illnesses, as well as chronic sequelae. Other risks associated with filth include dental injury, and aflatoxicosis (Ref. 11). Contamination with *Salmonella* and *Listeria* were also common reasons for detention (2,322 and 809 shipments, respectively). *Listeria monocytogenes* infection in a pregnant woman may result in spontaneous abortions or encephalitis in the newborn. For immuno-compromised persons, exposure to *Listeria* can result in septicemia or meningitis.

Illegal food additives (741 shipments) have been linked to gastroenteritis and disruptions of the nervous system (Ref. 11). Color additives (1,008 shipments), yellow no. 5 (46 shipments), and excess sulfites (47 shipments) were also common reasons for detention. These additives can cause allergic reactions with some sensitive individuals, ranging from mild contact dermatitis to a severe allergy attack (Ref. 11). Pesticide contamination (1,529 shipments) may also pose long-term risks of cancer, as well as kidney, liver, or central nervous system changes (Ref. 11). Foreign objects in food (381 shipments) may pose a hazard ranging from simple dental injury to esophageal perforation (Ref. 11).

Table 3 of this document shows some of the possible illnesses and injuries that can result from violative foods and includes their symptoms and an average cost per case. The quality-adjusted life days (QALD) (Ref. 10) column represents the lost utility per day to a consumer from an illness. It is essentially the loss to the consumer due to symptoms and problems associated with the illness. The QALDs are valued in dollars by multiplying the number of lost days by the value of a statistical day, $630 (64 FR 36516 at 36523, July 6, 1999). This value of a statistical life day is drawn from the economic literature (Ref. 12). The medical cost column is the direct, medical cost of illness, which includes hospitalization and doctor visits. Most illnesses arising from *E. coli* O157:H7 or *Salmonella* are self-limiting and short in duration. However, both *Salmonella* and *E. coli* O157:H7 can be serious. *E. coli* in some cases can result in kidney damage or death. *Salmonella* can sometimes trigger chronic arthritis and, in a small percentage of cases, can result in death.

TABLE 3.—COST OF SOME ILLNESSES POTENTIALLY AVERTED BY THE RULE

	Potential Harm	Symptoms	QALD Loss	Dollar Value of Lost QALDs	Medical Costs	Total Cost
Allergens[1]	Contact dermatitis	Reddening, swelling, itching of skin	2.10	$1,325	$125	$1,450
	Allergic reaction	Difficulty breathing, asthma, rash, possible shock	1.03	$646	$550	$1,196
Listeria contamination[2]	Moderate and severe listeriosis	Fever, nausea, diarrhea, may result in stillbirths, coma, death	1,754	$1,104,979	$9,548	$1,114,527

TABLE 3.—COST OF SOME ILLNESSES POTENTIALLY AVERTED BY THE RULE—Continued

	Potential Harm	Symptoms	QALD Loss	Dollar Value of Lost QALDs	Medical Costs	Total Cost
Objects in food[3]	Simple dental injury	Toothache, headache	0.23	$145	$0	$145
	Complex dental injury	Simple, plus infection	3.47	$2,187	$3,540	$5,727
	Oral emergency	Sharp pain in mouth, face, neck, bleeding, plus possible metastatic or local infection	4.27	$2,687	$3,540	$6,227
	Tracheo-esophageal obstruction	Choking, difficulty breathing, cyanosis, hypertension	0.48	$304	$0	$304
	Esophageal perforation	Pain in chest, bleeding aspiration pneumonia, requires surgery	13.93	$8,776	$14,160	$22,936
Salmonella contamination[4]	Salmonellosis	Vomiting, nausea, possible arthritis, low probability of death	24.37	$15,357	$2,289	$17,646
E. coli contamination[5]	*Gastroenteritis Hemolytic Uremic Syndrome*	Vomiting, nausea, bloody stools, possible kidney damage, low probability of death	10.79	$6,797	$4,829	$11,626

[1, 2, 3] Mauskopf et al., 1988.
[4, 5] 63 FR 24254.

4. Other Consumer Benefits

Although problems such as insects or filth in food may not necessarily represent a direct health threat, they show that the food was not held in sanitary conditions. Moreover, consumers who purchase food expect it to be clean and sanitary. The Food Marketing Institute found 89 percent of consumers surveyed ranked a clean, neat store as a very important factor in selecting their primary supermarket. If consumers pay a premium, believing their food is sanitary and the food is not, this payment represents a social loss. However, FDA cannot quantify the economic benefit from avoiding this social loss because the agency does not know what percentage of the price of food is a "cleanliness premium."

E. Costs of the Proposed Rule

The costs of this proposed rule arise from the new activities required over and above those already in existence. "The Laboratory Procedures Manual," chapter 21 entitled "Guidance on the Review of Analytical Data Generated by Private Laboratories" lists the information that should be included in analytical packages for sample collections and analyses conducted by private laboratories that conduct analyses on FDA-regulated commodities imported into the United States submitted to FDA (Ref. 13). This is guidance for FDA field personnel who receive analytical packages from private laboratories on how to review these packages. This guideline replaces and is very similar to that in the "Regulatory Procedures Manual," part 9, chapter 52 entitled "Private Laboratories," revised January 1988 (Ref. 14). It specifies that submissions should include information on how the sample was collected, including identification of the sample, what sample collection procedures were used, and how the samples were prepared. For the analyses, the submissions should contain a description of the analytical methods used, raw data and results, instrumental conditions and parameters, analysts' signatures, and statements from the laboratory director and the importer that the report contains all analyses related to the sample.

To verify that the national guidance is followed, we communicated with field personnel in four districts: Los Angeles, San Francisco, Baltimore, and Southwest. Field personnel in all districts confirmed that they follow the national guidance or district guidance that has the same elements as the national guidance (Refs. 15 and 16). Since importers were not previously required to prenotify FDA of their intention to use a private laboratory, this requirement is a cost of the rule. Notification would likely require 30 to 60 minutes of a secretary's time at a cost of $17 per hour (Bureau of Labor Statistics). For 8,767 shipments each year, this cost would range from $74,519 to $149,039. Importers are also required to prenotify FDA of their intention to use a sampling service. Eighty to 95 percent of importers use sampling services, so this will require between 7,014 and 8,329 additional notifications. This additional cost will range between $59,619 and $141,593; this gives a total cost of $134,138 to $290,626 per year.

F. Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. The primary impact of this rule will be on food importers. The small business definition for food importers is 100 employees or fewer; this definition applies to more than 95 percent of food importers. A search of companies in the Duns Market Identifiers database found 1,739 food importers that would potentially be affected by this rule. Of the 1,739 potentially affected food importers, 1,700 had fewer than 100 employees (Ref. 4). FDA finds that this proposed rule may have a significant economic impact on a substantial number of small entities, particularly if the notifications required by the rule are distributed unequally across firms.

FDA considered additional flexibility for small businesses by waiving the notification requirements. However,

since the vast majority of importers are small, this would reduce the benefits of the rule significantly. Also, the overall effect of the rule will be beneficial to small business, due to the clearer guidelines for gathering and handling samples and submission of analytical packages.

G. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). FDA has determined that this rule is not a significant action as defined in the Unfunded Mandates Reform Act and will not have an effect on the economy that exceeds $100 million adjusted for inflation in any one year. The current inflation-adjusted statutory threshold is $110 million.

VIII. Submission of Comments and Proposed Effective Date

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments regarding this proposal. Sumit written comments regarding information collection to OMB (see **ADDRESSES**). Two paper copies of any comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Aureli, P. et al, "An Outbreak of Febrile Gastroenteritis Associated With Corn Contamination by *Listeria Monocytogenes*," *New England Journal of Medicine*, pp. 1236–1241, April 27, 2000.

2. Bureau of Labor Statistics, Employer Costs for Employee Compensation Summary, *http://stats.bls.gov/news.release/ecec.nws.htm*, 1999.

3. Congressional Hearing, "The Safety of Food Imports: Fraud and Deception in the Food Import Process; Hearing Before the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations," September 10, 1998.

4. Dialog Classic, Search of Wholesalers Who Import With SIC Codes Between 5141 to 5149 That Are Importers, February 29, 2000.

5. Dalton, C. B. et al, "An Outbreak of Gastroenteritis and Fever Due to *Listeria Monocytogenes* in Milk," *New England Journal of Medicine*, pp. 100–105, January 9, 1997.

6. Food and Drug Administration, "Food Labeling: Warning and Notice Statement: Labeling of Juice Products; Final Rule," (63 FR 37029 at 37037, July 8, 1998).

7. Food and Drug Administration, "Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rule to Require Refrigeration of Shell Eggs at Retail and Safe Handling Labels," (64 FR 36516, July 6, 1999).

8. Food Marketing Institute, Consumer Attitudes and the Supermarket, Research International USA, 1999.

9. GAO Report, "Food Safety: Federal Efforts to Ensure the Safety of Imported Foods Are Inconsistent and Unreliable" (GAO/RCED–98–103).

10. Kaplan, R. M., J. P. Anderson, and T. G. Ganiats, "The Quality of Well-Being Scale: Rationale for a Single Quality of Life Index," edited by Walker, S. R. and Rosser, R. M., *Quality of Life Assessment: Key Issues in the 1990s*, The Netherlands: Kluwer Academic Publishers, 1993.

11. Mauskopf, J. A., M. T. French, A. S. Ross, et al., "Estimating the Value of Consumers' Loss From Foods Violating the Federal Food, Drug, and Cosmetic Act," Research Triangle Report to the Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, September 1988.

12. Viscusi, W. K., "The Value of Risks to Life and Health," *Journal of Economic Literature*, vol. 31, pp. 1912–1946, December 1993.

13. U.S. Food and Drug Administration, "Laboratory Procedures Manual," chapter 21, available at *http://www.fda.gov/ora/science_ref/lpm/lpchtr21.html*, accessed on 3/17/2003.

14. U.S. Food and Drug Administration, "Regulatory Procedures Manual," chapter 9-52, "Import Procedures, Private Laboratories," revised 1988.

15. U.S. Food and Drug Administration, Baltimore District SOP Manual, S.O.P. # 609 Private Laboratories.

16. U.S. Food and Drug Administration, Pacific Region Private Laboratory Guidelines, Private Laboratory Analytical Collection Report, revised April 1995.

List of Subjects in 21 CFR Part 59

Foods, Imports, Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended as follows:

1. Part 59 is added to read as follows:

PART 59—REQUIREMENTS PERTAINING TO SAMPLING SERVICES AND PRIVATE LABORATORIES USED IN CONNECTION WITH IMPORTED FOOD

Authority: 21 U.S.C. 331, 332, 333, 334, 341, 342, 343, 344, 348, 371, 372, 374, 376, 381, 393; 42 U.S.C., 264.

Subpart A—General Information

§ 59.1 Who is subject to this part?

(a) The requirements in this part apply to you if you:

(1) Use a sampling service to collect samples of an imported food in connection with an FDA enforcement action; or

(2) Use a private laboratory to collect, analyze, or test samples of an imported food in connection with an FDA enforcement action.

(b) This part also applies to you if you are a sampling service or a private laboratory and you have been hired or retained to collect, analyze, or test an imported food in connection with an FDA enforcement action.

(c) Enforcement actions include, but are not limited to, product seizure, refusal of imports, or the issuance of an injunction. This part does not apply if you collect, analyze, or test imported food samples for purposes not related to an FDA enforcement action.

§ 59.3 What definitions apply?

(a) *FDA* means the U.S. Food and Drug Administration.

(b) *Private laboratory* means an independent person who analyzes or tests samples of imported food.

(c) *Sampling service* means an independent person who collects samples of an imported food. Sample collection may include collecting samples from lots of FDA-regulated products in conformance with FDA-recommended sampling procedures and schedules.

Subpart B—Requirements for Persons Using Private Laboratories and Sampling Services in Connection With Imported Food

§ 59.101 What requirements apply if you use sampling services?

(a) If you intend to use a sampling service to collect samples of an imported food in connection with an FDA enforcement action, you must notify the FDA district office that is reviewing the entry of the imported food. Your notification must inform the FDA district office that you intend to use such services and include:

(1) The name and address for each sampling service you intend to use,

(2) Each sampling service's qualifications and knowledge of sampling procedures,

(3) A primary contact (name and phone number) for each sampling service,

(4) The address or addresses where the sampling records will be maintained, and

(5) The reason(s) why the product is being sampled.

(b) You must also:

(1) Give to each sampling service the U.S. Customs Service entry number, FDA entry line number (if applicable or available), the location of the lot that will be sampled, sufficient information to identify the lot to be sampled, and the name and address of the private laboratory that will test the sample;

(2) Not influence or interfere with the manner and process in which samples are collected; and

(3) Maintain control of the lot from which the sample was taken until FDA notifies you that you can release the lot or take other action on the lot.

§ 59.103 What requirements apply if you use private laboratories?

(a) If you use a private laboratory to test or analyze samples of an imported food in connection with an FDA enforcement action, you must notify the FDA district office that is reviewing the entry of the imported food. Your notification must state that you intend to use a private laboratory and to have the private laboratory submit the results and supporting data to FDA. Your notification must also include:

(1) The private laboratory's name and address,

(2) The private laboratory's qualifications,

(3) A primary contact (name and phone number) for the private laboratory,

(4) The address where the test will be conducted (if different from the private laboratory's address), and

(5) The reason(s) why the product is being tested or analyzed.

(b) You must also:

(1) Give to the private laboratory the U.S. Customs Service entry number (if the product is imported or offered for import into the United States), and FDA entry line number (if applicable or available);

(2) Not influence or interfere with the manner and process in which samples are tested and/or analyzed;

(3) Maintain control of the lot from which the sample was taken until FDA notifies you that you can release the lot or take other action on the lot; and

(4) If you will use or are using more than one private laboratory to conduct tests, notify all private laboratories involved and FDA. Your notice must state how many private laboratories are conducting or will conduct tests or analyses and describe those tests or analyses.

§ 59.105 What requirements apply if you collect your own samples?

If you collect your own imported food samples and intend to have the samples tested or analyzed and used in connection with an FDA enforcement action, you must comply with subpart C of this part.

Subpart C—Requirements for Sampling Services

§ 59.201 What are the requirements for collecting, identifying, and maintaining samples?

(a) If you collect samples of an imported food in connection with an FDA enforcement action, you must perform the following operations independently:

(1) Verify the location, identity, and size of the lot to be sampled;

(2) Collect samples following established procedures that ensure the sample's integrity, accuracy, and representational nature;

(3) Ensure the integrity of the sample after collection by including proper identification to avoid mixups between samples, avoiding contamination, maintaining sterility or appropriate temperatures, or taking other measures to protect the sample's integrity;

(4) Identify all containers from which samples are collected;

(5) Complete a sample collection report for each sample collected. The sample collection report must, at a minimum, document sample collection procedures and sample preparation techniques; and

(6) Prepare and ship the sample, using precautions where necessary to prevent contamination, to maintain the integrity of the sample, or to maintain sterility or temperatures, and ship the original sample collection report directly to the private laboratory.

(b) You must maintain records demonstrating your compliance with paragraph (a) of this section for 3 years after you have sent the sample collection report to the private laboratory. These records should include documents showing how you identified, collected, and maintained the sample. You must also make these records available to FDA upon request for inspection and copying. If you collect samples under an established, non-FDA procedure, you must retain records concerning that procedure. However, if you collect samples under an FDA sampling procedure, you can omit the FDA sampling procedure from your records, but you should keep notes to show which FDA sampling procedure you used.

Subpart D—Requirements for Private Laboratories

§ 59.301 What requirements pertain to analyzing samples, preparing analytical reports, and maintaining records?

(a) If you are a private laboratory conducting tests or analyses on an imported food, and the results and supporting data of those tests or analyses will be used in connection with an FDA enforcement action or submitted directly to FDA, you must:

(1) Verify that the sample received corresponds to the sample described on the sample collection report;

(2) Confirm the reasons for analyzing the sample;

(3) Use appropriately validated or recognized analytical procedures to analyze the sample, including the creation and maintenance of a reserve portion of a composite sample; and

(4) Prepare an analytical report for submission with the original sample collection report and complete analytical package. The analytical package must:

(i) Describe the analytical methods used;

(ii) Include an original compilation of all data and corresponding quality control results and supporting data supporting the test;

(iii) Include reagent blank and spike recovery data;

(iv) Describe instrumental conditions and parameters;

(v) Include the analysts' signatures;

(vi) Include the analysts' calculations; and

(vii) Contain a certificate of analysis.

(b) You must provide, as part of your analytical package, an affidavit stating that:

(1) The analytical package pertains to the only test(s) done on the lot or product and that you are not aware of any other tests being performed; or

(2) If you are aware of other tests that are being or have been performed by other persons, the name and address of the person who is conducting or who has conducted the other tests.

(c) You must submit the analytical package and the original sample collection report to the FDA district office that processed the entry of the imported food. Additionally, you must:

(1) Maintain records relating to the requirements under paragraphs (a) and (b) of this section for 3 years after you submitted the analytical package and original sample collection report to FDA, and

(2) Upon request, make records available to FDA for inspection and copying.

§ 59.303 What are the requirements for private laboratories collecting samples?

If you are a private laboratory and collect samples of an imported food in connection with an FDA enforcement action, you must comply with subpart C of this part.

Dated: April 22, 2004.

Lester M. Crawford,

Acting Commissioner of Food and Drugs.

[FR Doc. 04–9699 Filed 4–26–04; 11:58 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–089–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rulemaking for an amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed rulemaking pertained to the State's response to several letters that we had sent it, which identified changes to SMCRA and the Federal regulations and that may require amendments be made to the State coal regulatory program. We are withdrawing the proposed rulemaking, because, for the 12 items published as a proposed amendment, the State actually provided rationale for not making some changes, rather than proposing changes, and for various other reasons.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158; Internet address: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253 (a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated August 15, 2000, we requested that the West Virginia Department of Environmental Protection (WVDEP) provide us a response to six 30 CFR part 732 notifications that we had previously sent the State (Administrative Record Number WV–1178). The Federal regulations at 30 CFR 732.17(d) provide that OSM must notify the State of all changes in SMCRA and the Federal regulations that will require an amendment to the State program. Such letters sent by us are often referred to as "732 letters or notifications." On December 20, 2000 (Administrative Record Number WV–1191), the WVDEP responded to our August 15, 2000, letter. We note that in its December 20, 2000, letter, the State incorrectly cited a March 6, 2000, letter from OSM rather than our August 15, 2000, letter.

The Federal regulations at 30 CFR 732.17(b) provide that the State regulatory authority shall notify OSM, as a possible program amendment, of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. In a January 12, 2001, **Federal Register** notice (66 FR 2866), we announced receipt of the State's December 20, 2000, letter and published it as a proposed rulemaking. In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on whether the proposed amendment satisfies applicable program approval criteria.

The State's December 20, 2000, letter addressed 22 part 732 items. For six of the items (identified in our **Federal Register** notice as 2, 3, 6.F, 6.G, 6.H, and 6.I), the State indicated that it would be submitting proposed changes in the future. These items relate to coal extraction incidental to the extraction of other minerals, special reclamation fund, prime farmland, qualified SOAP (Small Operator Assistance Program) laboratory, qualifications for SOAP assistance, and filing for SOAP assistance, respectively. We stated that, for those items, we would announce the proposed changes in a future proposed rule upon their submission. For four items (identified as 4, 5, 6.J, and 7 regarding subsidence and water replacement, ownership and control, bond release, and staffing, respectively), we stated that (for various reasons described in the notice) the State had not submitted program changes. Therefore, we did not make these 10 items part of the proposed rule.

For the remaining 12 items addressed in the State's December 20, 2000, letter, we did characterize the State's responses as a program amendment and invited comments on the proposal. However, for each of these 12 items, the WVDEP actually asserted that no additional changes to the West Virginia program were necessary for the reasons explained in its letter. The State responses for which we requested

public comment were identified in the January 12, 2001, **Federal Register** notice as follows: Items 1, 2.A, 2.B, 2.C, 2.D, 2.E, 2.F, 2.G, 2.H, 3, 4, and an unnumbered item concerning inspection frequencies. These numbers do not fully correspond to the numbering system in the State's December 20, 2000, letter. The corresponding State numbers are: Items 1, 6A, 6B, 6C, 6D, 6E, 6K, 6L, 6M, unnumbered item, 8, and 9. These issues concern stocking and planting arrangements; definition of other treatment facilities; definition of previously mined area; definition of siltation structure; definition of significant recreational, timber, economic, or other values incompatible with surface mining operations; permitting requirements relating to the new dam classification criteria; performance standards relating to the new dam classification criteria; coal mine waste; thin and thick overburden; inspection frequencies at abandoned sites; subsidence due to underground mining; and valid existing rights, respectively.

The public comment period closed on February 12, 2001 (Administrative Record Number WV–1195). No one requested a public hearing, so none was held. However, a public commenter requested an extension of the public comment period, and to accommodate that request we accepted comments through February 28, 2001 (Administrative Record Numbers WV–1200 and WV–1201). We received comments on the December 20, 2000, submittal from one environmental group and two Federal agencies.

III. OSM's Findings

For reasons more fully explained below, we are withdrawing our proposed rulemaking on all 12 of the items that we announced in our January 12, 2001, **Federal Register** notice as proposed amendments. These 12 part 732 items fall into three distinct categories with one common element. We will discuss each of these categories in turn, with our rationale for withdrawing the rulemaking in each category.

a. State Has Committed to Future Rulemaking

For six items, the State has since revised its position. WVDEP has committed to amending its approved program relating to six items, and, by letter dated December 2, 2003, has submitted a schedule for doing so. Therefore, the State's December 20, 2000, submission for those six items, which we published as a proposed amendment identified as Items 1, 2.B, 2.E, 2.F, 2.G, and the unnumbered item on inspection frequencies at abandoned sites, is now moot because the State has subsequently revised its response and committed to future rulemaking. Therefore, we are withdrawing our January 12, 2001, rulemaking as it relates to these items. We will announce any proposed State changes in future rulemaking notices as they are received.

b. Suspension of Part 732 Notifications

For two items, we have suspended our requirement that the State amend its program. These items concern subsidence due to underground mining and valid existing rights. Given ongoing litigation, we have suspended all action on these two part 732 notifications until further notice. We will provide the State with formal notification in the future when these part 732 notifications will have to be addressed by the State. By letter dated November 17, 2003, we notified the State that we were suspending all actions relating to our August 22, 2000, part 732 letter regarding subsidence due to underground mining and valid existing rights until further notice (Administrative Record Number WV–1378). Items 3 and 4 in our January 12, 2001, proposed rulemaking addressed these issues. Therefore, the rationale provided by the State in its December 20, 2000, letter relating to these two items is now moot, because we are not mandating any changes at this time. Therefore, we are withdrawing our January 12, 2001, rulemaking notice as it relates to these two items.

c. Agreement That No Change Is Required

For the following four items, that we identified as Items 2.A., 2.C., 2.D., and 2.H. and solicited comments on in our January 12, 2001, **Federal Register** notice, we reviewed the State's December 20, 2000, response, conducted further evaluation of the issues, and concluded that the State's program, as currently approved, is no less effective than the Federal rules in regard to these items. Because the State had actually submitted rationale for not changing its approved program, rather than proposing any changes for these four items, and we have determined that no changes are required, that decision does not constitute rulemaking in regard to the approval of a State program amendment. Therefore, we are withdrawing our January 12, 2001, rulemaking notice in relation to these four items. Instead, we have notified the State by letter dated April 8, 2004, in which we explained that we have withdrawn our part 732 notifications relating to these items because we have determined that the State's approved program is no less effective than the Federal rules in regard to these items.

Although the decision to terminate our part 732 notifications relating to the four items that were advertised is an administrative decision distinct from approving them as a State program amendment as proposed in our January 12, 2001, **Federal Register** notice, we are including our rationale for those decisions in this notice because we did receive comments on these issues and we feel a full explanation to the public of our decision is warranted. The explanation included here is the same as that provided the State in our letter dated April 8, 2004, resolving the following four issues and terminating the part 732 notifications associated with them.

c.1. 30 CFR 701.5 Definitions of "other treatment facilities" (Item 2.A.) and "siltation structure" (Item 2.C.)

In our July 22, 1997, part 732 letter to the WVDEP, we informed it that the Federal definition of "other treatment facilities" was revised and removed from 30 CFR 816/817.46(a)(3) to 30 CFR 701.5, and that the State must add a counterpart definition to its program. The revised Federal definition of "other treatment facilities" adds the words "neutralization" and "precipitators" (common water quality treatment processes) and the phrase "[t]o comply with all applicable state and Federal water quality laws and regulations." This latter modification was made to clarify that the purpose of a treatment facility is to comply with water quality laws, as well as to prevent additional contributions of dissolved or suspended solids to streamflow or off-site runoff.

Also, in our July 22, 1997, part 732 letter, we informed the State that OSM had moved the definition of "siltation structure" from 30 CFR 816/817.46(a)(1) to 30 CFR 701.5. OSM stated that the State's regulations do not define "siltation structure," but that the State's rules do define "sediment control or other water retention structure, sediment control or other water retention system or sediment pond." Finally, OSM stated that the State needs to define the terms "other treatment facilities" and "siltation structure" or explain why they are not needed.

In its December 20, 2000, letter, the WVDEP asserted that the State does not need the definitions of "other treatment facilities" or "siltation structure." The WVDEP stated that the West Virginia program contains a definition of "sediment control or other water

retention structure, sediment control or other water retention system, or sediment pond" at CSR 38–2–2.110, and the definition of "chemical treatment" at CSR 38–2–2.21. Additionally, the WVDEP stated that the term "siltation structure" is defined in the Federal rule as a sedimentation pond" and that corresponds to the State's definition of "sediment control or other water retention structure, sediment control or other water retention system, or sediment pond."

The Federal definition of "other treatment facilities," at 30 CFR 701.5, provides as follows:

> Other treatment facilities means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:
> (a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or
> (b) To comply with all applicable State and Federal water-quality laws and regulations.

The Federal definition of "siltation structure," at 30 CFR 701.5, provides as follows:

> Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

We find that, despite the fact that the West Virginia program lacks definitions of "other treatment facilities" and "siltation structure," the State program is not rendered less effective than the Federal requirements for the following reasons.

The State's definition of "sediment control or other water retention structure, sediment control or other water retention system, or sediment pond" at CSR 38–2–2.110 "means an impoundment designed, constructed, and maintained * * * for the purpose of removing solids from water in order to meet applicable water quality standards or effluent limitations before the water is discharged into the receiving stream. Examples include * * * all ponds and facilities or structures used for water treatment." Part of the State's language quoted above (the part that states "for the purpose of removing solids from water in order to meet applicable water quality standards or effluent limitations before the water is discharged into the receiving stream.") is substantively identical to the Federal definition of the term "sedimentation pond," which is a term used in the Federal definition of "siltation structure."

The State's definition of "chemical treatment," at CSR 38–2–2.21, "means the treatment of water from a surface coal mining operation using chemical reagents such as but not limited to sodium hydroxide, calcium carbonate, or anhydrous ammonia for purposes of meeting applicable state and federal effluent limitations." Therefore, these two State definitions combine to encompass impoundments, sediment ponds, facilities or structures, and chemical treatments used to assure compliance with State and Federal water quality standards or effluent limitations.

In addition, the State performance standards at CSR 38–2–14.5.c, concerning "treatment facilities," provide that "[a]dequate treatment facilities shall be installed, operated and maintained * * * to treat any water discharged from the permit area so that it complies with the * * * [effluent limitations] of CSR 38–2–14.5.b. * * *" Finally, CSR 38–2–14.5.b provides that "[d]ischarge from areas disturbed by surface mining shall not violate effluent limitations or cause a violation of applicable water quality standards. The monitoring frequency and effluent limitations shall be governed by the standards set forth in a NPDES [National Pollutant Discharge Elimination System] permit issued pursuant to W. Va. Code [Code of West Virginia] 22–11 *et seq.*, the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 *et seq.* and the rules and regulations promulgated thereunder."

We find that, combined, the State provisions at CSR 38–2–2.110, 38–2–2.21, 38–2–14.5.b, and 38–2–14.5.c are no less effective than the substantive meaning of the Federal definitions of "other treatment facilities" and "siltation structure" at 30 CFR 701.5. While the West Virginia program does not specifically provide examples of chemical or mechanical treatment as does the Federal definition of "other treatment facilities," that omission alone does not render the State program less effective, since the Federal examples are illustrative only. Furthermore, the State's provisions do not exclude nor prohibit the use of any of the treatment facilities identified in the Federal definitions of "other treatment facilities" or "siltation structure." Because State rules acknowledge that sediment control structures are used for water treatment and such structures are used to ensure compliance with effluent limitations and water quality standards, the aforementioned State provisions are no less effective than the Federal definitions of "other treatment facilities" and "siltation structure" at 30 CFR 701.5. For these reasons, we find that these part 732 issues are satisfied and no amendments of the approved State program are required.

c.2. 30 CFR 761.5. "Significant Recreational, Timber, Economic, Other Values Incompatible With Surface Coal Mining Operations" as it Relates to Federal Lands (Item 2.D.)

In our July 22, 1997, part 732 letter to the WVDEP, we informed it that the phrase "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" is part of the State's approved program at W. Va. Code 22–3–22(d)(5), but it is not defined.

In its December 20, 2000, letter, the WVDEP stated that the State does not need to define this term since 30 CFR 740.4 states that the determination of significant recreational, timber, economic, or other values incompatible with surface coal mining operations is the responsibility of the Secretary of the Department of the Interior.

We concur with the WVDEP's assessment of this term, and we find that the West Virginia program is not rendered less effective than SMCRA or the Federal regulations by lacking a definition of the term for the following reasons. Section 522(e)(2) of SMCRA provides that, subject to valid existing rights, no surface coal mining operations except those which exist on the date of enactment of SMCRA shall be permitted "on any Federal lands within the boundaries of any national forest: Provided, however, that surface coal mining operations may be permitted on such lands if the Secretary [of the Department of the Interior] finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations * * *." The Federal regulations at 30 CFR 740.4(a)(5) clearly provide that it is the sole responsibility of the Secretary of the Department of the Interior to make these findings. When making such determinations on Federal lands within the State of West Virginia. the Secretary will use the Federal definition of that term at 30 CFR 761.5. Therefore, we find that the State does not have to add a definition of the term to the West Virginia program, and that this 30 CFR part 732 issue is satisfied.

c.3. 30 CFR 816.104(a) and 816.105(a) Thin or Thick Overburden (Item 2.H.)

In our July 22, 1997, part 732 letter to the WVDEP, we informed it that 30 CFR 816.104(a) and 816.105(a) contain revised definitions of thin and thick overburden, respectively. Although W. Va. Code 22–3–13(b)(3) contains provisions regarding thin and thick overburden and CSR 38–2–14.15

contains West Virginia's backfilling and grading requirements, we stated that West Virginia does not define thin or thick overburden. In addition, we stated that the State does not have regulations comparable to 30 CFR 816.104 and 816.105. We also stated that since backfilling and grading of thick overburden is a common practice in the State, the WVDEP needs to amend its regulations or explain why its existing requirements are no less effective than those set forth in 30 CFR 816.105.

In its December 20, 2000, response, the WVDEP stated that West Virginia does not need to amend its rule. The WVDEP stated that the statute at W. Va. Code 22–3–13(b)(3) defines thin and thick overburden, and it has similar language to that contained in 30 CFR 816.104(a) and 816.105(a).

For the following reasons, we agree with the WVDEP's assertion that the State does not need to further amend its rules. The Federal regulations at 30 CFR 816.104(a) provide that "[t]hin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour [AOC]." It further provides that "[i]nsufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain."

The State provision at W. Va. Code 22–3–13(b)(3) provides for reclamation to AOC, with the following exception for thin overburden:

> Provided, that in surface-mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region * * *.

This language, though not identical to the Federal definition at 30 CFR 816.104(a), entails the same substantive analysis of a coal seam and its surrounding overburden. Under both the Federal and State schemes, the volume of the postmining overburden, spoil and waste material must be less than that of the combined premining volume of the overburden and coal in order for the proposed operation to qualify for the "thin overburden" AOC exemption.

Also, the State's thin overburden provision does not contain specific counterparts to the Federal language at 30 CFR 816.104(a)(1) and (2). However, the State's counterparts to those provisions are located at W.Va. Code 22–3–3(e) (the definition of AOC), and are, in effect, incorporated into W.Va. Code 22–3–13(b)(3) by the State's reference to insufficient overburden, spoil and waste to restore AOC. Therefore, we find that the State's description of thin overburden at W.Va. Code 22–3–13(b)(3) is substantively identical to the Federal definition of thin overburden at 30 CFR 816.104(a).

The State's description of thick overburden is also contained in W.Va. Code 22–3–13(b)(3), and provides as follows:

> Provided, however, that in surface-mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate original contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and is [sic] revegetated in accordance with the requirements of this article * * *

This language, though not identical to the Federal definition at 30 CFR 816.105(a), entails the same substantive analysis of a coal seam and its surrounding overburden. Under both the Federal and State schemes, the volume of the postmining overburden, spoil and waste material must be greater than that of the combined premining volume of the overburden and coal, in order for the proposed operation to qualify for the "thick overburden" AOC exemption.

Also, the State's thick overburden provision does not contain specific counterparts to the Federal language at 30 CFR 816.105(a)(1) and (2). However, the State's counterparts are located at W. Va. Code 22–3–3(e) (the definition of AOC), and are, in effect, incorporated into W. Va. Code 22–3–13(b)(3) by the State's requirement to restore the land to AOC.

The State counterparts to the requirements at 30 CFR 816.104(b)(1) (thin overburden) and 816.105(b)(1) (thick overburden), concerning using all available spoil and waste materials to achieve the lowest practicable grade, are located in the performance standards at W. Va. Code 22–3–13(b)(3).

The W. Va. Code lacks specific counterparts to the Federal regulations at 30 CFR 816.104(b)(2) and 816.105(b)(2), which require compliance with the Federal regulations at 30 CFR 816.102(a)(2) through (j). However, the State program does contain counterparts to 30 CFR 816.102(a)(2) through (j) at CSR 38–2–5.5, 14.3, 14.5, 14.6, 14.15, and 14.18. In addition, the State's counterparts to the Federal requirements concerning excess spoil disposal at 30 CFR 816.105(b)(3) are at W. Va. Code 22–3–13(b)(22) and CSR 38–2–14.14. Since these provisions are of general applicability to all surface coal mining operations in West Virginia, there is no reason to believe they will not be applied to thin or thick overburden operations in particular.

For all of the foregoing reasons, we find that the West Virginia program currently contains counterparts to the Federal regulations that are no less effective than the Federal regulations concerning thin and thick overburden at 30 CFR 816.104 and 816.105, and, therefore, this 30 CFR part 732 issue is satisfied. However, we do recommend that for clarity the State modify its rules at CSR 38–2–14.15.a.1 as discussed in its December 2, 2003, letter and specifically identify the AOC variance for thin or thick overburden and reference those backfilling and grading provisions that are applicable to such a variance.

IV. Summary and Disposition of Comments

Public Comments

In response to our requests for comments from the public on the proposed amendments (see Section II of this preamble), we received the following comments from the West Virginia Highlands Conservancy (WVHC) concerning the 30 CFR part 732

issues that are explained within this notice (Administrative Record Number WV–1202).

30 CFR Part 732 Letter Dated July 22, 1997

a. 30 CFR 701.5, definitions of "other treatment facilities" and "siltation structure." WVHC stated that the definitions cited by the State in its December 20, 2000, letter do not include all of the elements and limitations of "other treatment facilities." Without these elements, WVHC stated, the State program is less effective than the Federal program. The WVHC also stated that the Federal definition of "siltation structure" is broader than sedimentation pond.

We disagree with these comments. As discussed above in Finding c.1, the State provisions at CSR 38–2–2.110, 38–2–2.21, 38–2–14.5.b, and 38–2–14.5.c combined are no less effective than the Federal definitions of "other treatment facilities" and "siltation structure" at 30 CFR 701.5. While the West Virginia program does not specifically provide examples of chemical or mechanical treatment as does the Federal definition, that omission alone does not render the State program less effective, because the State's provisions do not exclude nor prohibit the use of any of the treatment facilities identified in the Federal definition of "other treatment facilities." In addition, the West Virginia program does have counterparts to the other aspects of the Federal definition of "other treatment facilities." That is, the State's program requires the installation of adequate treatment facilities for the purpose of meeting applicable State and Federal effluent limitations and water quality standards. Such treatment facilities could include a sedimentation pond or a series of sedimentation ponds.

b. 30 CFR 761.5, "Significant recreational, timber, economic, other values incompatible with surface coal mining operations" as it relates to Federal lands. WVHC stated that without including the broader and more specific Federal language, the State program is less effective than the Federal program.

We disagree with this comment. As we discussed above in Finding c.2, SMCRA at section 522(e)(2) provides that, subject to valid existing rights, no surface coal mining operations except those which exist on the date of enactment of SMCRA shall be permitted on any Federal lands within the boundaries of any national forest: Provided, however, that surface coal mining operations may be permitted on such lands if the Secretary of the Department of the Interior finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations. The Federal regulations at 30 CFR 740.4(a)(5) clearly provide that it is the sole responsibility of the Secretary of the Department of the Interior to make these findings. When making such determinations on Federal lands within the State, the Secretary will use the Federal definition of that term at 30 CFR 761.5. Since we found that the State does not have to add a definition of the term to the West Virginia program, this 30 CFR part 732 issue is satisfied.

c. 30 CFR 816.104(a) Backfilling and grading: Thin overburden. WVHC stated that the State definitions are different than and narrower than the Federal definitions. They must therefore be changed, the WVHC stated, to comply with the Federal program.

As we discussed above in Finding c.3, the State's provisions at W. Va. Code 22–3–13(b)(3) apply to thin and thick overburden. While the State's descriptions of thin and thick overburden are structured differently than the counterpart Federal definitions at 30 CFR 816.104(a) and 816.105(a), the State's requirements are, nevertheless, substantively identical to the Federal counterpart definitions and the performance standards.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program by letters dated January 26, 2001 (Administrative Record Number WV–1199). By letter dated February 14, 2001 (Administrative Record Number 1204), the United States Department of Labor, Mine Safety and Health Administration (MSHA) responded to our request for comments. MSHA stated that in the event that any long-standing regulation or an amendment thereto should change or alter the areas of a surface or underground coal mine or a preparation facility, including refuse piles, impoundments, sealed mines, or highwalls at surface mines, to please call MSHA. MSHA also stated that an MSHA technical inspector will be assigned to discuss the mine operator's approved plans concerning the affected areas for the amendment at issue. MSHA's comments are outside the scope of the four part 732 issues discussed in the above Findings and, therefore, will not be discussed here.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the State program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On January 26, 2001, we asked for concurrence on the amendment (Administrative Record Number WV–1198). On July 3, 2001, EPA sent us its written concurrence, with the understanding that implementation of the amendments must comply with the Clean Water Act (CWA), NPDES regulations, and other statutes and regulations under EPA authority (Administrative Record Number WV–1225). There is nothing in the State counterpart to the part 732 issues discussed in the Findings above that prevents compliance with the CWA, NPDES regulations, or other statutes and regulations under EPA authority. EPA provided us no other comments on the part 732 issues discussed above.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 04–9538 Filed 4–28–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030630163–4122–02, I.D. 052303F]

RIN 0648–AR15

Authorization for Commercial Fisheries Under the Marine Mammal Protection Act of 1972; Zero Mortality Rate Goal

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

ACTION: Proposed rule; request for comments

SUMMARY: The Marine Mammal Protection Act (MMPA) was enacted in 1972 with the ideal of eliminating

mortality and serious injury of marine mammals incidental to commercial fishing operations. In 1994, Congress amended the MMPA and established a requirement that the level of incidental mortality and serious injury of marine mammals be reduced to insignificant levels approaching a zero rate by April 30, 2001, which is commonly referred to as the Zero Mortality Rate Goal (ZMRG). To implement the ZMRG, NMFS must establish a threshold level for mortality and serious injury that would meet this requirement. NMFS proposes in this rule that this threshold level be 10 percent of the Potential Biological Removal level (PBR) for a stock of marine mammals. NMFS solicits comments on this proposed rule and on the draft Environmental Assessment (EA) for this action.

DATES: Comments must be received by June 1, 2004.

ADDRESSES: Comments should be submitted to Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS (F/PR2), 1315 East-West Highway, Silver Spring, MD 20910. Alternatively, comments may be submitted by email to *0648–AR15@noaa.gov*, through the Federal e-Rulemaking Portal, *http://www.regulations.gov* (follow the instructions for submitting comments), or by facsimile (fax) to (301) 427–2516.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, NMFS, Silver Spring, MD (301) 713–2322, ext. 105, or email *Tom.Eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

Copies of the MMPA Bulletin and marine mammal stock assessment reports (SARs) are available at *http://www.nmfs.noaa.gov/prot_res/overview/mm.html#mmpa*. Public comments on the Advance Notice of Proposed Rulemaking, the draft EA, and other information related to this proposed rule are available on the Internet at the address above or at *http://www.nmfs.noaa.gov/pr/* (see "Recent News and Hot Topics").

Background

On July 9, 2003 (68 FR 40888), NMFS published an advance notice of proposed rulemaking (ANPR) describing options for defining provisions of the ZMRG, which includes the requirement under the MMPA for commercial fisheries to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate. The ANPR provides a detailed discussion of the legislative history regarding ZMRG.

The ZMRG has been a part of the MMPA since the statute was enacted in 1972. Although the legislative history is clear that the ideal for the ZMRG is to eliminate mortality and serious injury of marine mammals incidental to commercial fishing operations, it also clear that Congress recognized that such an ideal could not be achieved with existing technologies. Prior to 1994, the MMPA contained no specific deadline for achieving the ZMRG. Thus, the ZMRG expressed the ideal that U.S. commercial fisheries should continue to improve fishing gear and practices to eliminate incidental mortality rather than to rely on current fishing technologies that may continue deaths of marine mammals.

In 1994, Congress amended the MMPA and established in section 118(b)(1), 16 U.S.C. 1387(b)(1), a deadline of April 30, 2001, to reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero rate. With the establishment of the deadline, the ZMRG moved from a philosophy of continually seeking to improve fishing methods and technologies to a goal with a specific deadline.

The ZMRG is described in MMPA section 118(b). First, this section establishes target levels of incidental mortality and serious injury (insignificant levels approaching a zero mortality and serious injury rate) and a date to achieve the target (April 30, 2001). Second, the MMPA states that fisheries that maintain insignificant levels of serious injury and mortality of marine mammals approaching a zero rate shall not be required to further reduce their mortality and serious injury rate. Third, the MMPA directs NMFS to complete a review of the progress of all commercial fisheries, by fishery, toward the target levels of incidental mortality and serious injury and to submit to Congress a report of the review. The report must also note any commercial fishery for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery. Finally, if the results of the review indicate that mortality and serious injury incidental to a commercial fishery are inconsistent with target levels of mortality and serious injury, then NMFS must take appropriate action under MMPA section 118(f), which provides the process for developing and implementing take reduction plans (TRPs).

The MMPA directs NMFS to develop and implement a TRP in cases where strategic stocks (threatened, endangered, or depleted stocks or stocks for which human-caused mortality exceeds the calculated PBR) interact with Category I or II fisheries (Category I and II fisheries are those that have frequent or occasional, respectively, incidental mortality and serious injury of marine mammals; see definitions at 50 CFR 229.2), and the MMPA allows NMFS to develop and implement a TRP for cases in which a non-strategic stock interacts with a Category I fishery which NMFS determines has a high level of mortality and serious injury across a number of such stocks. The MMPA contains no provisions for NMFS to develop and implement a TRP to reduce mortality and serious injury of non-strategic stocks of marine mammals incidental to Category II fisheries.

The MMPA provides that the short-term goal of a TRP is to reduce mortality and serious injury of marine mammals to levels below PBR within 6 months. The MMPA states that the long-term goal of a TRP is to reduce, within 5 years of its implementation, the incidental mortality and serious injury of marine mammals incidentally taken in the course of commercial fishing to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Neither the MMPA nor its legislative history indicate how these factors must be taken into account. The legislative history, however, indicates that Congress understands that available technologies may be insufficient to achieve the ideal goal of eliminating incidental mortality and serious injury of marine mammals within the economic constraints of commercial fisheries.

The MMPA does not address clearly the situation in which available technology is insufficient to reduce incidental mortality and serious injury to insignificant levels in a manner that is economically feasible for fisheries. The legislative history makes repeated references to Congressional intent to avoid shutting down fisheries or putting an overwhelming economic burden on fisheries to achieve the goal, and it contains many references to the use of the best available technologies as evidence of progress toward the ZMRG. The requirement in MMPA section 118(b)(1) provides no allowance for consideration of economics and technology in fisheries having reduced incidental mortality and serious injury to insignificant levels approaching a zero rate. However, MMPA section

118(f) specifically incorporates this consideration into the long-term goal of TRPs to reduce mortality and serious injury to insignificant levels approaching a zero rate.

Finally, the ZMRG does not explicitly exclude any commercial fisheries from achieving target levels of mortality and serious injury, and it does not exclude any marine mammal stocks from consideration. The MMPA, however, contains no provisions to develop TRPs for non-strategic stocks that are killed or seriously injured incidental to Category II fisheries. Thus, if a Category II fishery takes a non-strategic stock at levels higher than insignificant and approaching a zero mortality and serious injury rate, the MMPA has no mechanism to further reduce such mortality and serious injury.

The meaning of ZMRG under MMPA section 118 is not clear, and to implement provisions of the MMPA related to ZMRG, NMFS needs to define the level of mortality and serious injury that would be considered as insignificant levels approaching a zero rate. As described in NMFS' MMPA Bulletin (June/July 1995, p. 3) there were three major questions related to the ZMRG: (1) What does insignificant mean, (2) how close to zero do we need to approach, and (3) what rate should be used as the measurement?

NMFS addressed the first question by proposing a rule that would provide that the ZMRG address the biological significance of the levels of incidental mortality and serious injury to marine mammal stocks. In addressing "approaching a zero rate", NMFS stated its intent to control incidental loss of marine mammals through regulation or restrictions on fisheries to the point where these losses are biologically insignificant to marine mammal stocks. However, NMFS would continue to work with the fishing industry to design, refine, and use technologies and methods that are more "marine mammal friendly". Thus, NMFS intended to incorporate "approaching a zero rate" through incentive and improvement of available technologies and methods after incidental mortality and serious injury are reduced to a point where they are biologically insignificant.

Regarding the appropriate rate, NMFS noted that from 1988 though 1994, the rate of incidental mortality that had been used in classifying fisheries was the number of takes by an individual vessel in a 20–day period. NMFS also considered an alternative rate as the number of marine mammals in a stock killed incidental to commercial fisheries in a year. Neither of these rates were directly related to biological significance. However, a rate that expresses annual fishery-related mortality as a function of population size or productivity would address biological significance of the mortality.

In 1995, NMFS proposed a rule (60 FR 31666, June 16, 1995) that, among other things, proposed a level of mortality that would have an insignificant impact on marine mammals stocks as 10 percent of any stock's PBR. That definition was removed from the final rule (60 FR 45086, August 30, 1995), and since that time, NMFS has not promulgated final regulations to define ZMRG.

In August 2002, several organizations filed suit against NMFS alleging that NMFS failed to meet requirements of MMPA section 118. These organizations and NMFS negotiated a settlement agreement that requires, among other things, for NMFS to define the ZMRG through regulations and to submit to Congress the report on fisheries' progress toward the ZMRG as required by MMPA section 118(b)(3).

In an ANPR related to the ZMRG (68 FR 40888, July 9, 2003), NMFS described three options for defining an insignificance threshold (the maximum number of incidental mortalities or serious injuries that a population stock of marine mammals could sustain and be considered insignificant to the population), described 2 options for incorporating available technology and economic feasibility into the evaluation of a fishery relative to target mortality and serious injury levels, and solicited comments on these options or the identification of additional options related to the ZMRG. NMFS has considered comments received on the ANPR and is providing responses to these comments in this proposed rule.

Key Issues Related to the ZMRG

Despite substantial attention in the legislative history of the MMPA, the ZMRG remains confusing in certain key areas. The following discussion presents some of these confusing points as questions and addresses each question.

What Is the ZMRG?

The ZMRG is described in section 118(b) of the MMPA and includes provisions in other parts of the MMPA as well. In simple form, the ZMRG contains the following:

(1) A target for reducing incidental mortality and serious injury and a deadline by which the target is to be achieved;

(2) A statement that fisheries that have achieved the target shall not be required to further reduce incidental mortality and serious injury rates;

(3) A requirement for submitting a report to Congress describing fisheries' progress toward the target and notes fisheries for which additional information is required to assess levels of incidental mortality and serious injury; and

(4) A mechanism (the TRP process) to reduce levels of incidental mortality and serious injury in fisheries that have not met the target (within that mechanism, the economics of the fishery, availability of existing technology, and existing fishery management plans must be taken into account).

In this document, NMFS proposes an insignificance threshold as the target level of mortality and serious injury for all stocks of marine mammals. The insignificance threshold for each stock is 10 percent of that stock's PBR unless the Assistant Administrator for Fisheries adjusts that value and provides a rationale for such an adjustment.

In cases where total fishery mortality and serious injury exceed a stock's insignificance threshold, item (4) above directs NMFS to take appropriate action under the TRP process. TRPs apply to Category I and II fisheries and not to Category III fisheries. Therefore, Category III fisheries are not required to further reduce mortality and serious injury through the TRP process; however, NMFS intends to work with Category III fisheries through incentive and improved fishing technologies to reduce incidental morality and serious injury as resources allow (see response to comment 42).

What Is an Insignificant Level of Incidental Mortality and Serious Injury?

In 1995 NMFS discussed various interpretations of the term "significant" and proposed that "insignificant" within the ZMRG should relate to the biological significance of incidental mortality and serious injury to marine mammal stocks (MMPA Bulletin, June/July 1995). An insignificant level of incidental mortality and serious injury is one that has an insignificant impact on any stock of marine mammals. Three options for such levels were described in the 2003 ANPR, and each of these could be defended as having an insignificant impact on marine mammal stocks.

Why Is the Deadline Iinportant?

The deadline emphasizes a date by which Congress intended for incidental mortality and serious injury to be reduced to insignificant levels approaching a zero rate and creates an expectation that all incidental mortality and serious injury will be sufficiently

reduced at some point in time. Prior to 1994, there was no specific deadline for achieving target levels of mortality and serious injury, and the ZMRG was more of a philosophy than a specific goal. That philosophy included the understanding that unnecessary deaths of marine mammals should be avoided, and, to the extent feasible, mortality and serious injury incidental to fishing operations should be eliminated. However, Congress was fairly clear in the legislative history of the MMPA that the available technology was insufficient to achieve the goal of eliminating incidental mortality and serious injury. Thus, the underlying philosophy of the ZMRG maintained that when new fishing practices or gear that would reduce mortality and serious injury became available, the fishing industry would adopt them. The deadline put an urgency on achieving an undefined goal and promoted confusion and frustration among a variety of constituents.

How Will Incidental Mortality and Serious Injury Levels Approach a Zero Rate?

An important part of answering this question lies in the choice of an appropriate rate to measure. The number of incidental mortalities and serious injuries in a year is a rate with mortalities and serious injuries as the numerator and time (one year) as the denominator. If NMFS identified this rate as the appropriate measure for the ZMRG, then fisheries would have to reduce annual incidental mortality and serious injury to levels approaching zero. However, mortalities and serious injuries per year is not the only rate that could be incorporated into the ZMRG. For example, in implementing the provisions of MMPA section 114, which were enacted in 1988, NMFS used a different mortality and serious injury rate for classifying fisheries. In its implementing regulations for MMPA section 114, NMFS defined frequent, occasional, and remote likelihood takings of marine mammals in terms of the number of marine mammals incidentally taken by an average fishing vessel in a 20–day period. More than one take per 20–day period was considered frequent, about one take per 20–day period was considered occasional, and remote likelihood meant that it was highly unlikely that any marine mammal would be taken by a vessel in a 20–day period. Thus, from 1988 through 1994, the pertinent rate was the number of marine mammals taken by a single fishing vessel in a 20–day period.

In 1994 and 1995, when preparing regulations to implement section 118 of the MMPA, NMFS rejected the previously used rates for classifying fisheries because they had no biological relevance. For example, a vessel in a small fishery (one with few participants or one that operated for a limited duration) could take several marine mammals from a large stock in a 20–day period, and that fishery would have little, if any, impact on the affected population. On the other hand, a large fishery could have a severe impact on a small population even if the per vessel take over a 20–day period was exceedingly small (i.e., approaching a zero rate). In its implementation of MMPA section 118, NMFS defined frequent, occasional, and remote likelihood in terms of marine mammal stocks' ability to sustain mortality (i.e., a function of the affected stock's PBR). Furthermore, NMFS proposed that an insignificant level of mortality and serious injury would be a small portion of the affected stock's PBR. Thus, since 1994, NMFS has considered the pertinent rate for the ZMRG to be the annual number of individuals in a stock of marine mammals killed or seriously injured incidental to commercial fishing per 1,000 animals in the affected stock.

In the ANPR published in 2003 for the current proposed rule, NMFS described three options for insignificance thresholds that can be mathematically re-arranged to be the product of a stock's Nmin and a rate constant. Under the 3 options, the rate constants varied from 0.0002 (10 percent of PBR for an endangered cetacean stock) to 0.006 (10 percent of PBR of a pinniped stock within its OSP [Option 1] or 10 percent delay in recovery of a pinniped stock [Option 2]). These options, therefore, define "rate" as the number of marine mammals incidentally killed or seriously injured by a fishery in a year as a function of the population size of the stock. Such "rates" are biologically relevant, and the result of each option is so small that it could be considered "approaching a zero * * * rate".

Would a Fishery Be Closed if It Missed the Target Mortality and Serious Injury Level by the Deadline?

A fishery would not be closed under the ZMRG simply because its incidental mortality and serious injury rate was above the target level at the deadline. The ZMRG specifically states that if mortality is higher than target levels, then NMFS should take appropriate action under MMPA section 118(f), which provides for developing and implementing TRPs. The MMPA requires that the long-term goal of TRPs must consider available technology and the economics of the fishery.

There is clearly a conflict within the MMPA because the statute has a very specific goal (reach the target by the deadline), and it does not specifically provide the consequences for a fishery not having reduced incidental mortality and serious injury to target levels by the deadline. However, the MMPA specifically states that the mechanism to reduce mortality and serious injury (the TRP process) must take into account technological and economic constraints in the long-term goal of TRPs, and NMFS must follow the TRP process under MMPA section 118(f) in regulating to reduce mortality and serious injury of marine mammals incidental to commercial fisheries.

Comments and Responses

NMFS received 14 letters, each of which contained comments on various aspects of the ANPR. These letters are available for review (see Electronic Access). These letters contain a wide range of views on the meaning of the ZMRG and on fisheries' achievement of this goal. Comments addressed 5 major topics: (1) General aspects of the ZMRG and related concepts, (2) the options for insignificance threshold that were described in the ANPR, (3) the concept of "approaching zero", (4) incorporating economic feasibility and available technology, and (5) recommended alternatives other than the options included in the ANPR. A summary of these comments and NMFS' responses to them are grouped accordingly.

General Comments

Comment 1: ZMRG is an unnecessary tool that distorts ecosystem-based biological management by placing marine mammals above all other species. Indeed, a zero mortality policy is the equivalent of treating all marine mammals as if they have been listed under the Endangered Species Act (ESA), even if their populations are healthy and growing.

Response: The ZMRG is a requirement under the MMPA, and, therefore, NMFS must implement it.

Comment 2: There are consequences for other species that flow from managing the oceans to give marine mammals the first and highest priority. While no one supports or condones actions leading to marine mammal mortality and injury, ZMRG is an inappropriate management tool because it ignores the needs of other species in the ocean ecosystem. It also ignores the needs and interests of other ocean users. Certainly, the ZMRG objective of maintaining marine mammal

populations at or near their maximum population level in the ecosystem is important. So is providing food for people and jobs for workers. The commercial seafood industry deserves consideration as well.

Response: As noted in the response to comment 1, the ZMRG is a part of the MMPA and must be implemented. The process to achieve target levels of incidental mortality and serious injury (i.e., TRPs) must consider available technology and the economics of fisheries, as well as state or regional fishery management plans. Therefore, the economics of the fishing industry are considered in the process for implementing the ZMRG as provided under the MMPA.

Comment 3: The problem with ZMRG begins with the statutory formula for determining the PBR that can be allowed for a marine mammal species. To compute PBR, the minimum population is multiplied by 50 percent of the maximum annual net reproductive rate. The resulting number is then reduced by a recovery factor of 0.1 for endangered species, 0.5 for threatened or status uncertain species, and 1.0 for others. The policy question is why scientists should not use the actual population level and reproduction rate supported by the data rather than the minimum population level and only half of the reproduction rate.

Response: This comment describes a common misinterpretation of the elements used in calculating PBR, upon which the various options for identifying an insignificance threshold were based. The PBR equation as provided under the MMPA uses an estimate of the abundance of the affected stock, an estimate of its annual net production, and a recovery factor. The actual abundance of marine mammals in all stocks of marine mammals is unknown. NMFS must, therefore, use an estimate of that abundance. Each such estimate contains a statistical variance; therefore, each estimate contains uncertainty regarding the actual number of animals in the population. Use of the minimum population estimate (Nmin), which is usually a lower limit of a confidence interval about the estimate, provides reasonable assurance that there is at least the number of estimated individuals in the population as provided in the definition of "minimum population estimate" under MMPA section 3(27), 16 U.S.C. 1362(27).

The productivity term in the PBR equation (one half the maximum theoretical or estimated net productivity rate of the stock at a small population size (Rmax)) apparently causes confusion as well. According to the logistic model, which is the underlying theory supporting the PBR approach, the per capita rate of increase is at its maximum when the population is very small relative to the carrying capacity. As the population grows, the per capita rate of increase decreases steadily until the population reaches its carrying capacity, at which time the population no longer grows.

One half Rmax is the per capita rate of increase expected under the logistic model when the population is at an abundance that would yield the greatest net annual production. If the PBR equation used a rate of increase higher than one half Rmax, the resulting PBR may represent a level of mortality that is higher than a population could sustain, and repeated annual mortality at that level could cause the population to decline below its Optimum Sustainable Population level (OSP). Such a situation would be inconsistent with the definition of PBR under the MMPA and with the MMPA goal of maintaining marine mammal stocks within their OSP levels.

Comment 4: The net result of the ZMRG is that marine mammal populations are maintained at 90 percent or more of the carrying capacity of the ecosystem. For no other ocean species is the management objective to return populations to their pristine level. This objective can only be achieved at the expense of other species, including endangered and threatened species. Equally important, this objective is achieved at the expense of providing food for the people of the country and the world because ZMRG will restrict commercial fishing even when there is no reasonable or foreseeable threat to healthy marine mammal populations.

Response: The MMPA does not provide an objective of returning marine mammals to pristine levels. As provided in response to comment 1, ZMRG is a requirement under the MMPA, and, therefore, NMFS is implementing it. The ZMRG applies only to mortality and serious injury incidental to commercial fishing operations; however, populations of marine mammals are affected by many other factors in their environments. If target levels of incidental mortality and serious injury were achieved, populations of marine mammals would not necessarily equilibrate at 90 percent or higher of their carrying capacities because other factors may limit population growth. Incidental mortality and serious injury by commercial fisheries below the insignificance threshold, however, would mean that fishing related mortality and serious injury are insignificant factors in the population trend of the affected marine mammal stock.

Comment 5: A review of the origins of the ZMRG concept clearly demonstrates that any NMFS rule using ZMRG as a regulatory standard designed to return marine mammal populations to their pristine levels is contrary to Congressional intent.

Response: Regulatory objectives do not include returning marine mammal populations to pristine levels. The ZMRG, however, expresses congressional intent that mortality and serious injury of marine mammals incidental to commercial fishing operations be reduced as low as feasible and termed such a level as an "insignificant level approaching a zero mortality and serious injury rate". A level of mortality and serious injury incidental to commercial fisheries that, by itself, would allow a population to equilibrate to a level within 90 percent of its carrying capacity would be considered insignificant to the population.

Comment 6: Section 118(f) of the MMPA notes that, while the long-term goal of take reduction plans is to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate, the plans also are to take into account the economics of the involved fisheries and the technological limitations for achieving the goal. That is, the ZMRG is not intractable but simply requires continued vigilance to reduce mortality and serious injury to the greatest extent possible, keeping in mind competing economic and technological factors.

Response: This comment confuses the mechanism to reduce mortality and serious injury (TRPs) with the ZMRG. As noted in other parts of the preamble (see Background and *What is the ZMRG?*), a TRP is the mechanism by which incidental mortality and serious injury are to be reduced, and ZMRG is described in MMPA section 118(f) regarding the long-term goal of TRPs to include consideration of the economics of the fishery and available technology. NMFS does not negate those considerations in this proposed rule. Comments 57–64 and their respective responses also address technology and economics.

Comment 7: We are disappointed to note that "zero mortality" for all fisheries was to have been met by April 30, 2001, through a 5–year Take Reduction Plan, a statutory requirement under the MMPA that was to have been implemented no later than 1996. We are

further disappointed to note that to this date there are still many fisheries without the required TRPs even established.

Response: NMFS has developed and implemented TRPs and monitored the performance of fisheries under these TRPs to the maximum extent that resources allow. Congress anticipated that resources would limit the government's ability to implement all plans at once and in MMPA section 118(f)(3) established priorities for developing and implementing TRPs. NMFS has used these priorities in determining which TRPs to develop and implement first.

Comment 8: Despite the fact that NMFS is under the aegis of the Department of Commerce, it is still required by law to protect marine mammals, not conserve them because of their importance to the tuna fishing industry as long as such sustainable use is "insignificant".

Response: Although the MMPA is designed to protect marine mammals, there are many provisions within the MMPA that allow the taking of marine mammals. MMPA section 118 and the provisions in that section related to ZMRG require NMFS, in developing and implementing TRPs, to consider the economics of affected fisheries.

Comment 9: A restrictive definition of the ZMRG is biologically unnecessary. The three components of the PBR calculation are sufficiently conservative, even before consideration of the ZMRG.

Response: Although a marine mammal population could be maintained within its OSP so long as human-caused mortality does not exceed PBR, the MMPA states that mortality and serious injury of marine mammals incidental to commercial fisheries shall be reduced to insignificant levels approaching a zero morality and serious injury rate. The legislative history of the ZMRG clearly expresses the ideal that any unnecessary mortality of marine mammals should be avoided if feasible. Furthermore, the MMPA specifically states that reducing mortality and serious injury to PBR levels is only the short-term goal of a TRP, and reducing mortality and serious injury to levels consistent with the ZMRG, taking into account listed factors, is the long-term goal of a TRP.

Comment 10: The Pacific Scientific Review Group (SRG) has been urging NMFS to officially define ZMRG for four years with little response. The current rush to do so now appears to come only in response to litigation and has left little time to arrange for joint or individual meetings of the SRGs to discuss these options with scientists from NMFS. The recurring "management by lawsuit" operational style adopted by NMFS does not lend itself to well-reviewed scientific discussions.

Response: The ZMRG is a major provision of MMPA section 118, and NMFS has implemented section 118 as completely and rapidly as possible. The current effort to define these terms was publicly initiated with the ANPR on July 9, 2003, and will be completed sometime in 2004. The various opportunities for public comment included in this process allow for ample discussions related to the definitions.

Comment 11: The ANPR cited the opinion of the Center for Marine Conservation (now called the Ocean Conservancy) to justify continued kill of dolphins in the eastern tropical Pacific Ocean (ETP) and equate mortality below PBR levels as constituting "zero mortality". NMFS should not use the opinion of only one organization, and the reference is unacceptable and misleading.

Response: This comment misinterprets the intent of the reference to the Center for Marine Conservation's testimony. There was no suggestion that any level of incidental mortality constituted "zero mortality". NMFS cited the opinion of the Center for Marine Conservation in its comparison of stock-specific dolphin mortality limits to the ZMRG. In its review of the hearing record for the International Dolphin Conservation Program Act (IDCPA), which established dolphin mortality limits, NMFS found only the Center's testimony making such a comparison. Therefore, the citation of only one opinion was appropriate.

Comment 12: Little information related to accurate mortality estimates is available and much information is unreliable. Therefore, mortality limits based upon assumed levels of mortality are likely to fail to give adequate protection to marine mammals.

Response: The evaluation of fisheries progress toward the ZMRG must be made according to the information available and is, therefore, subject to the limits of such information. MMPA section 118 also requires a report to Congress on fisheries progress toward the ZMRG, and that report will, by statutory direction, contain a section that identifies those commercial fisheries for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery. Therefore, NMFS will identify cases in which data are inadequate to accurately assess the level of incidental mortality and serious injury of marine mammals.

Comment 13: At the heart of the ZMRG process is the significant problem of lack of adequate data on which to base stock assessments. There is often no way of knowing how many animals there are in a given population, nor are we able to accurately determine the impact of mortalities in many fisheries. Because of a lack of resources, there are a number of fisheries about which we know little. For this reason, the take reduction teams have often found it difficult to adequately and accurately assess the success or failure of their proposed management regimes.

Response: Adequate information upon which to base a TRP and to evaluate its success is a vital part of the regime to govern interactions between marine mammals and commercial fishing operations. NMFS places a high priority on collecting the data necessary to develop and implement TRPs and to evaluate their success. Unfortunately, the costs of such evaluation is high and limits NMFS' ability to develop and implement additional TRPs.

Comment 14: While we feel that a zero mortality rate for any marine species is largely unrealistic and not achievable, we support the concept of the ZMRG, provided that the levels of incidental mortality and serious injury that may be established serve as goals and not compliance thresholds for mortality reduction.

Response: The ZMRG has several elements, including a target level of mortality and serious injury and a statement that once a fishery has achieved target levels, no further reduction in mortality and serious injury rates is required. Therefore, the insignificance threshold serves as a goal, and it establishes a limit to reductions in incidental mortality and serious injury that would be required. This level of mortality and serious injury is also the long-term goal for TRPs, and the regulatory mechanisms to achieve this goal must take into account existing technologies and the economics of fisheries.

Comment 15: The most explicit command regarding ZMRG is in MMPA section 118(b)(1), which states, "Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after [April 30, 1994]." Therefore, achieving such a level of mortality and serious injury is not an option; rather it is an unambiguous command of the statute, and such a command leaves no room for

consideration of the "feasible economics" of a given fishery.

Response: Unfortunately, the phrase "insignificant levels approaching a zero mortality and serious injury rate" is not clear and unambiguous. Therefore, the purpose of this proposed rule is to clarify this phrase by quantifying such levels of mortality and serious injury. Further, there are three other commands, in section 118(b)(2–4). Once a fishery has achieved target levels of incidental mortality and serious injury, no further reduction is required; a report on fisheries' progress in reducing incidental morality and serious injury is required; and fisheries above target levels of incidental mortality and serious injury must be addressed through appropriate action in the TRP process under MMPA section 118(f). The consideration of feasible economics is directed toward the long-term goal of a TRP under MMPA section 118(f), which is the mechanism to reduce mortality and serious injury of marine mammals incidental to commercial fisheries.

Comment 16: The ZMRG should be taken to mean the implementation of a precautionary approach to marine mammal management and that in taking action to protect marine mammal populations, any loss of, or potential harm to, such animals should be avoided. Any human-caused marine mammal mortality is undesirable and the ideal objective of any fisheries management plan should be to eliminate such loss.

Response: Eliminating loss of marine mammals incidental to commercial fishing is an ideal objective. The legislative history of the MMPA is reasonably clear that achieving zero mortality and serious injury is not likely, but should remain the ideal objective.

Insignificance Threshold

Comment 17: Option 3, 0.1 percent of Nmin (cetaceans) and 0.3 percent Nmin (pinnipeds), is an acceptable level by which cetacean and pinniped species should be managed. This is consistent with the established standard for an ETP dolphin insignificance threshold, which was defined by Congress.

Response: Option 3 is consistent with the established standard for ETP dolphins under MMPA section 302, 16 U.S.C. 1412. However, other alternatives are also consistent with the intent of the MMPA in provisions under MMPA section 118, and NMFS is proposing an insignificance threshold as 10 percent of a stock's PBR.

Comment 18: If NMFS decides to adopt a numerical goal for protected species, we recommend Option 2 (10 percent delay in recovery).

Response: Among options in the ANPR, Option 2 would provide the highest numbers of marine mammals that would be considered as an insignificant level of morality and serious injury. However, it would establish an insignificance threshold for stocks of endangered species that is equal to the PBR for these stocks, which would be inconsistent with the two goals (short- and long-term) of TRPs included in the MMPA.

Comment 19: Option 1 suggests that OSP should be 90 percent of carrying capacity for healthy stocks, 95 percent for status uncertain stocks, and 98 percent for endangered, threatened or depleted stocks. Option 2 suggests that OSP is 90 percent of carrying capacity, while Option 3 suggests OSP is 95 percent of carrying capacity. However, NMFS has already defined OSP as a range of population levels between 60 percent and 100 percent of carrying capacity. It is inappropriate, unwise, and likely a violation of law to use this ANPR to redefine OSP only for commercial fishermen.

Response: As noted in this comment, NMFS has used the range of population sizes from 60 percent of a stock's carrying capacity to the stock's carrying capacity as a marine mammal stock's OSP in evaluating whether a population stock of marine mammals is depleted under the MMPA. However, NMFS is not using this action to redefine OSP. The statements in the ANPR that marine mammal populations would reach levels of 90 percent to 98 percent of the stock's carrying capacity do not redefine carrying capacity. Rather, these statements indicate that mortality and serious injury of marine mammals incidental to commercial fisheries that did not exceed the insignificance thresholds under the three options would allow marine mammals to equilibrate within their OSP, near the carrying capacity, if other factors did not limit population growth.

Comment 20: In 1995, NMFS proposed a rule in which a fishery would be deemed to have met the ZMRG if it, in combination with all other interacting fisheries, killed and/or seriously injured no more than 10 percent of the PBR level of any stock. We supported this proposed definition. NMFS also proposed that in cases where incidental mortality and serious injury of all fisheries exceeded 10 percent of any stock's PBR, a single fishery would be deemed to have met the ZMRG if it was responsible for killing or seriously injuring less than one percent of the PBR for that particular marine mammal stock. We opposed this provision because if there were more than 10 interacting fisheries and each took 1 percent of the PBR, a stock could be unfairly and significantly disadvantaged over a stock with only a single interacting fishery. We are pleased to see that NMFS has not proposed this again as one of the options.

Response: In 1995, the proposed rule contained a provision to address situations where more than one fishery caused mortality and serious injury of a marine mammal stock and where total fishery mortality for that stock exceeded 10 percent of the stock's PBR. In these cases, NMFS proposed that a fishery that killed or seriously injured no more than 1 percent of the stock's PBR would be consistent with the ZMRG. In 1995, there were no cases where more than 10 fisheries killed or seriously injured a stock of marine mammals incidental to their operations. The ANPR did not address these same situations although there are cases where more than one fishery causes incidental mortality and serious injury of the same marine mammal stock, and incidental mortality and serious injury of that stock are above 10 percent of the stock's PBR. This proposed contains no provision to address this situation because none is needed (see related discussion under the headings "What Is the ZMRG" and "The Proposed Rule").

Comment 21: In all of its annual stock assessments since 1995, NMFS has used 10 percent of PBR as one of the measures for assessing the status of stocks. NMFS provides no justification in the current ANPR that suggests that this de facto definition was no longer considered scientifically justifiable or unfeasible. There is no apparent need for a new interpretation of the definition.

Response: NMFS is proposing to use 10 percent of PBR as the insignificance threshold in part to avoid confusion that would result by changing from its use in SARs since 1995.

Comment 22: Option 1 is generally the most protective of endangered stocks. As stock abundance increases, Options 1 and 3 begin to equalize and finally end with Option 3 being the most protective of abundant stocks. NMFS should afford priority to protecting vulnerable stocks in its choice of definitions for the ZMRG. For this reason alone, Option 1 is the preferable option to assure adherence to the intent of the MMPA.

Response: NMFS proposes to use Option 1 as the insignificance threshold.

Comment 23: Option 1 is simple to calculate for each stock. Furthermore, it is scientifically justifiable.

Response: NMFS is proposing Option 1 as the insignificance threshold.

Comment 24: In a report of a joint meeting of SRGs in 1999, it was noted that 0.1 percent of a stock's Nmin (which is the formula for calculating long-term dolphin mortality limits for the purse seine fishery for yellow-fin tuna in the Eastern Tropical Pacific Ocean) yielded similar results to 10 percent of a stock's PBR. One might expect that scientists who can analogize the essential results of what are now being called Options 1 and 3 could justify either. Thus, either has scientific merit.

Response: Options 1 and 3 yield similar results for cetacean stocks of unknown, depleted, or threatened status, and NMFS has used default values in calculating the PBR.

Comment 25: For the majority of stocks, the objective of avoiding significant population-level effects is likely met by reducing mortality and serious injury to a point below PBR for each marine mammal stock, particularly those that are not depleted, threatened, or endangered.

Response: Annual human-caused mortality remaining below PBR would not prohibit a stock from reaching OSP nor cause it to be reduced below its OSP. The short-term goal of TRPs addresses this point; however, under MMPA section 118(f), TRPs have a long-term goal to reduce incidental mortality to insignificant levels approaching a zero mortality and serious injury rate.

Comment 26: In the case of some endangered species, for example Hawaiian monk seals, mortality and serious injury at the PBR level could still have significant population effects. The PBR for monk seals is about five animals, and the removal by incidental mortality and serious injury of five adult females, particularly those near the peak of their reproductive potential, annually could have grave consequences for individual reproductive colonies.

Response: NMFS is aware of the limits of the logistic model and its application to small, declining populations, such as Hawaiian monk seals. Thus, rather than apply a simple mathematical formula to monk seals, NMFS may adjust the insignificance threshold based on the circumstances. In such a case, NMFS would explain its departure from the simple mathematical approach.

Comment 27: Relatively small levels of fisheries-related mortality and serious injury also take on added significance when considered in combination with other factors that may be affecting a stock.

Response: NMFS proposes to use an adjustment, generally a reduction, of insignificance thresholds to address such situations as needed.

Comment 28: The options in NMFS' ANPR can be evaluated under the following considerations: (1) Do the options take advantage of the information available on the species or stock involved, (2) are they relatively simple or straightforward to implement, and (3) are they suitably protective and consistent with the statutory mandate? Option 1 would use all the information currently available for the PBR process, but options 2 and 3 may not use all such information, particularly where estimated, rather than default, values for population growth were used in calculating PBR. All three options appear to be relatively easy to implement. However, only Option 1 would increase the level of protection provided as a stock's status worsens. Because PBR may not provide adequate protection for endangered stocks, increasing the level of protection as a stock declines seems prudent and precautionary.

Response: NMFS agrees that all three options would be easy to implement and that Options 2 and 3 do not necessarily use all available data in those few cases where estimated, rather than default, values for population growth are used in the PBR calculation. NMFS also agrees that Option 1 would provide the greatest level of protection for endangered stocks; therefore, NMFS is proposing Option 1 as the insignificance threshold.

Comment 29: From a biological perspective, the ZMRG is in some aspects similar to the negligible impact standard, each standard striving to have insignificant levels of mortality.

Response: NMFS agrees.

Comment 30: We disagree with the statement that the use of 10 percent of PBR in a final rule could result in the over-regulation of some fisheries and the assertion that the use of Option 1 could result in the over-regulation of some fisheries.

Response: The MMPA states that a TRP, which is the mechanism for reducing mortality incidental to commercial fishing, must take into account available technology and the economics of fisheries under the long-term goal. NMFS recognizes these considerations in developing and implementing TRPs. Consequently, the potential for over-regulation is diminished.

Comment 31: While Option 2 would likely maintain populations at or above 90 percent of the carrying capacity, it would not adequately protect threatened and endangered stocks.

Response: Option 2 would not be consistent with section 118(f)(2) (see comment 32 and response); therefore, NMFS is not proposing to use it.

Comment 32: Option 2 would allow the ZMRG to be achieved when incidental mortality was equal to the PBR for endangered species. Therefore, this option is inconsistent with the requirement in section 118(f)(2) of the MMPA for a short-term goal of reducing incidental mortality and serious injury to levels less than PBR and a long-term goal of insignificant levels approaching a zero mortality and serious injury rate.

Response: NMFS agrees with this comment and is not proposing to use Option 2.

Comment 33: We disagree with the assertion that Option 3 may be too restrictive for stocks at their OSP level by setting the insignificance threshold for such stocks at 5 percent of their PBR level. Stocks must be maintained within their OSP and to do that, the actual mortality and serious injury should be as small as possible. The insignificance threshold should never be the basis to undermine the ZMRG by allowing large numbers of marine mammals to be killed or seriously injured merely because their populations have reached their OSP or carrying capacity.

Response: Options 1 and 2 would result in an insignificance threshold for stocks within their OSP that is double the number that would result from the application of Option 3; therefore, some constituents may perceive Option 3 as overly restrictive for these stocks compared to Options 1 and 2. However, NMFS is proposing Option 1 as the insignificance threshold, which is consistent with NMFS' long-held interpretation that the phrase, "insignificant levels", relates to the impact of incidental mortality and serious injury on the affected stocks of marine mammals. Identifying the insignificance threshold as 10 percent of PBR recognizes that an insignificant level of mortality and serious injury would be a small fraction (e.g., 10 percent or less) of the human-caused mortality and serious injury that the population of marine mammals could sustain. Thus, mortality and serious injury below the insignificance threshold of each stock would be consistent with the ZMRG target levels of mortality and serious injury, which are insignificant levels approaching a zero mortality and serious injury rate.

Comment 34: We generally support Options 1 and 2 and generally oppose Option 3. Despite the advantage of making U.S. management policy

consistent with an international agreement, it is more important that the definition be internally consistent with the MMPA.

Response: NMFS proposes to use Option 1 for the insignificance threshold. The comment regarding consistency with an international agreement and being internally consistent with the MMPA relates to Option 3, and NMFS is not proposing that option.

Comment 35: We recommend Option 1 because it has a direct link to PBR. However, we are concerned that this option may result in greater precautions than necessary for protection of some endangered species. Therefore, we recommend that this option contain a provision similar to that in Option 2 where the insignificance threshold equals PBR for endangered species.

Response: Although Option 1 may result in a small number for the insignificance threshold for endangered species, the recommendation offered by the commentor is inconsistent with the requirement for short- and long-term goals of TRPs and is not proposed.

Comment 36: Option 1 is the preferable option for defining an insignificance threshold as it is the only option that is compatible with various other statutory and regulatory provisions of the MMPA; it is familiar to NMFS' constituents as it is the same as the proposed definition of ZMRG in the initial rulemaking to implement the 1994 amendments; it is the current de facto definition of ZMRG used in the SARs; it is tied to the statutory defined role of PBR; and with its use, it is easy to measure the effectiveness of a TRP (once PBR has been reached, an additional 10 percent reduction for each successive six months would meet the long-term goal of the TRP).

Response: Option 1 has many strengths as provided in this comment, and NMFS is proposing to use this option based in part on these strengths. The last statement of this comment (once PBR has been reached, an additional 10 percent reduction for each successive six months would meet the long-term goal of the TRP) results in an easily understood approach; however, data to verify such a step-wise reduction would not likely be available due to sampling constraints.

Comment 37: NMFS claims that a downside of Option 1 is that it leads to "overly conservative levels of protection for certain endangered species". This is hardly a downside. NMFS is obligated to conserve endangered species, and the Supreme court admonished that endangered species are to be afforded the "highest of priorities". Therefore, an endangered species can never be deemed to have too much protection.

Response: NMFS proposes to use Option 1 as the insignificance threshold.

Comment 38: By defining the insignificance threshold as a function of PBR, Option 1 builds in the distinction between endangered, threatened, declining, stable, or increasing stocks that the variable recovery factor in the PBR reflects. Options 2 and 3 improperly and illegally nullify the distinction the MMPA creates in the treatment of stocks of different status.

Response: NMFS is proposing Option 1 as the insignificance threshold.

Comment 39: Option 2 is illegal in that it renders portions of section 118(f) superfluous. Under Option 2, the insignificance threshold for endangered species is the same as PBR for those endangered species for which the default value of 0.1 is used as the recovery factor. Therefore, the short-term goal and the long-term goal of TRPs are the same, and the last 4 1/2 years of the TRP are meaningless.

Response: Option 2 is inconsistent with the provisions of MMPA section 118(f)(2) in the case of endangered marine mammals, and NMFS is not proposing to use it.

Comment 40: We are opposed to Option 2 as a definition for ZMRG because ZMRG for threatened and endangered species could be set at the same level as PBR. Option 1 provides the most precautionary of the three proposed approaches to marine mammal conservation.

Response: The insignificance threshold under Option 2 would be the same as PBR for endangered species, and NMFS is not proposing to use it. Option 1 is the most precautionary for endangered species.

Comment 41: We are best able to support Option 2 (10 percent delay in recovery) and request that flexibility be provided for amending the definition for categorization of fisheries. If flexibility is not provided, then a great number of Alaska's fisheries could be improperly categorized.

Response: NMFS is not proposing to use Option 2 because it would be inconsistent with MMPA section 118(f)(2) for endangered species.

Approaching Zero

Comment 42: The only option of the three that NMFS is considering for defining "insignificant levels" that is compatible with the MMPA, as well as the ESA, is Option 1 which sets the insignificance threshold as 10 percent of PBR. Although this may be an appropriate definition for "insignificant levels", it is not the same as ZMRG. A complete definition of ZMRG must also incorporate the "approaching zero" language of the statute.

Response: NMFS proposes to define the insignificance threshold as the upper limit of annual incidental mortality and serious injury of marine mammal stocks that can be considered insignificant levels approaching a zero mortality and serious injury rate and proposes to use Option 1 to quantify that upper limit. This quantified, stock-specific level of mortality and serious injury is relatively easy to calculate, is based on information available in the SARs, and is based on the formula that NMFS currently uses to implement this statutory phrase for purposes of the SARs. Therefore, this quantified, stock-specific level should provide commercial fishing operations with an easily understandable level of mortality and serious injury as a target to provide incentive to improve fishing technology and practices to reduce incidental mortality and serious injury and provide an effective means to meet the ZMRG of the MMPA. In addition, NMFS would continue to work with the fishing industry through incentive and improvement of available technologies and methods even after incidental mortality and serious injury in any particular fishery is reduced to a point that is biologically insignificant.

This and other comments request that NMFS define two separate levels: a population-based insignificance level and then a different level to ensure that the interactions are "approaching zero" regardless of the overall impacts on the populations. These comments misread the statute. The statutory requirement is that commercial fisheries reduce mortalities to a single level: the "insignificant level." The phrase "approaching a zero mortality and serious injury rate" modifies the term "insignificant level." The "approaching zero" language does not create a stand-alone independent second criterion. NMFS proposes to effectuate this provision by adopting a single definition for the insignificant level rather than two separate definitions as suggested by these comments. NMFS has determined that 10 percent of the PBR is an insignificant level because it is a level approaching a zero mortality and serious injury rate which will not have effects at a population level. The upper limits range from 2 animals per 10,000 animals in the population stock for endangered whales to 6 animals per 1,000 animals for robust pinneped stocks. These levels "approach zero." See "How Will Incidental Mortality and Serious Injury Levels Approach A Zero Rate?"

Comment 43: Under any of the options, including Option 1, interactions (and thus mortalities) can continue to increase as marine mammal populations grow, while still being considered to meet the definition of the ZMRG. This would seem counter to the intent specified in the MMPA that rates be "reduced to insignificant levels approaching zero mortality and serious injury." While we do not believe that the Congress intended this to mean that the death rate must be absolutely zero, we do believe that the language in the MMPA indicates that this is not a static concept, but is intended to ensure that mortality is always reduced to its lowest feasible level.

Response: The ZMRG is not a static concept, and its goal is to reduce incidental mortality and serious injury of marine mammals to the lowest feasible level. NMFS realizes that the number of deaths of marine mammals incidental to commercial fishing could increase as numbers of marine mammals increase. As long as the mortality and serious injury rate (as a function of population size) decreased, an increase in the number of marine mammal deaths per year would still be consistent with the MMPA's goal of "approaching a zero mortality and serious injury rate." A rate based upon mortality and serious injury per 1,000 animals in the population addresses the impact of the mortality and serious injury on the affected stock of marine mammals and, in that sense, is biologically relevant. Therefore, NMFS is using a rate based upon population size or annual production (which is a function of population size) within the ZMRG. In addition, see response to comment 42 for additional reasons why NMFS proposes to use a quantifiable rate.

Comment 44: The MMPA requires not just "insignificant levels" of mortality and serious injury to marine mammal stocks, but also that such takes be at rates "approaching zero". Nowhere in the ANPR does NMFS attempt to include the "approaching zero" requirement into any of the proposed definitions of ZMRG. As such, each of the proposed definitions is inadequate as a matter of law.

Response: Although the ANPR contained only a description of options for "insignificant levels", this proposed rule addresses "approaching a zero...rate" by defining the insignificance threshold as the upper limit of annual incidental mortality and serious injury of marine mammal stocks that can be considered insignificant levels approaching a zero mortality and serious injury rate. In addition, see response to comment 42.

Comment 45: If the significance thresholds for each stock of marine mammals were summed, the total for pinnipeds alone would be in the thousands. These numbers would surely shock an American public who wishes to see marine mammal deaths minimized, and would not consider the deaths of thousands of marine mammals each year in the U.S. to be "insignificant".

Response: Although the sum of the insignificance thresholds for all pinnipeds would be a large number, mortality and serious injury below the proposed threshold would not have a significant effect on any stock of marine mammals, and mortality and serious injury limited to the insignificance threshold would be insignificant and approaching a zero rate (when the "rate" being considered is mortality and serious injury as a function of population size or annual production). In addition, see response to comment 42.

Comment 46: Mortalities may rise with increases in population abundance of marine mammals; therefore, NMFS needs to develop a mechanism for either capping mortality at current ZMRG levels or "ratcheting" fisheries to lower levels that can be put in place as marine mammal stocks increase. This would prevent death rates from increasing even higher as marine mammal stocks finally begin to recover.

Response: The suggestion to ratchet allowable mortality levels downward in the future is one option to approach a zero mortality and serious injury rate; however, such an approach would conflict with the MMPA's requirement that once target levels of mortality and serious injury have been achieved, fisheries are not required to further reduce mortality and serious injury. The MMPA does not specify what "rate" should approach zero, and NMFS stated in 1995 and continues to maintain that the ZMRG should be based primarily on the significance of incidental mortality and serious injury to the affected stock.

Comment 47: The ZMRG has two key elements. First, it requires that incidental mortality and serious injury levels be reduced to the point that they are insignificant. Our interpretation is that such insignificance is to be gauged by looking at population-level effects. Second, as an additional element, the ZMRG requires that the rate of incidental mortality and serious injury approach zero. We believe this second element was intended to compel the technological advancement of fisheries to the greatest extent practicable to avoid any death or serious injury of individual marine mammals.

Response: Insignificant levels may best be gauged by looking at population effects of incidental mortality and serious injury rates. Mortality and serious injury rates based upon population size or annual production are biologically relevant, and the result of Option 1 for all stocks is a rate that is biologically insignificant and so small as to be approaching a zero rate. Calculation of the insignificance threshold under Option 1 results in rates ranging from 6 per 1,000 for robust stocks of pinnipeds to 2 per 10,000 for endangered cetaceans, and these rates are so small as to approach a zero rate. In addition, see response to comment 42 for additional reasons why NMFS proposes to use such a quantifiable rate.

Comment 48: Congress clearly intended to set a goal that goes beyond the protection of populations. The drafters of the legislation also intended to compel fishermen to avoid or minimize, to the extent technologically and economically feasible, the number of individual marine mammals killed or seriously injured. Therefore, even when removals from a stock incidental to commercial fishing operations can be tolerated at the population level, everything that is technologically and economically feasible to be done to reduce the mortality and serious injury of individual marine mammals to the lowest level practicable should be done.

Response: Once incidental mortality and serious injury has been reduced to insignificance thresholds for all stocks of marine mammals, continued reduction of incidental mortality and serious injury may be accomplished through incentive and working with the fishing industry to improve available technologies and methods, which is similar to the approach described for eliminating dolphin mortality in the ETP (see MMPA section 302(8); 16 U.S.C. 1412(8)).

Comment 49: The three proposed options to achieve "zero mortality" are insufficient, unacceptable, and, in at least two instances (Options 2 and 3) in direct conflict with the MMPA. We are especially concerned that the ANPR makes no attempt to include the language "approaching zero" in any of these options.

Response: "Approaching a zero...rate" is addressed in this proposed rule as described in responses to comments 42 and 44 and to other comments under the heading "Approaching Zero".

Comment 50: NMFS claims that one of the pros of Option 3 is that it is consistent with the ETP dolphin standard which is an "insignificant" metric specifically defined by Congress. This statement may be true; however,

stock-specific mortality limits are but one limit, and, given the goal of eliminating mortality, Congress never intended this limit to be the endpoint.

Response: NMFS is aware that the MMPA contains the goal of eliminating mortality incidental to purse seine fisheries for yellow-fin tuna in the ETP. There is, however, no required mechanism to achieve this goal; furthermore, the MMPA states that an International Dolphin Conservation Program should be established requiring, among other things, provisions for a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin morality. The MMPA does not require a regulatory approach to eliminate mortality once incidental mortality is reduced below stock-specific, quantifiable dolphin mortality limits.

Comment 51: Congress clearly intended that the "zero mortality rate" of marine mammals be zero, as in no marine mammals.

Response: Congressional intent related to regulation of fisheries under the ZMRG is not clear. The divergence of opinions expressed in the comments to the ANPR for this proposed rule illustrates the lack of clarity of the intent of the ZMRG. However, the plain language of the statute relating to ZMRG provides that the incidental mortality and serious injury of marine mammals by commercial fisheries shall be reduced to "insignificant levels approaching a zero mortality and serious injury rate" (emphasis added); it does not provide "zero mortality rate" or "zero marine mammals". Furthermore, MMPA section 118(f) requires that TRPs take into account the economics of fisheries, available technologies, and existing state and regional fishery management plans, and this requirement indicates some flexibility in achieving the long-term goal of TRPs.

Comment 52: NMFS is required to take economics and available technologies into account in figuring out how to reduce mortality and serious injury to insignificant levels, but NMFS cannot use these factors as an excuse not to reach such levels.

Response: The MMPA provides that TRPs are the mechanism to reduce mortality and serious injury of marine mammals under the ZMRG (see MMPA section 118(b)(4)). The MMPA also states that, in developing and implementing TRPs, NMFS must take into account the economics of the affected fisheries, available technology, and existing fishery management plans (see MMPA section 118(f)(2)) when developing and implementing measures to achieve the long-term goal for reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

Comment 53: The MMPA requires not just "insignificant levels" of mortality and serious injury to marine mammal stocks, but also that such takes be at rates "approaching zero". Nowhere in the ANPR does NMFS attempt to include the "approaching zero" requirement into any of the proposed definitions of ZMRG. As such, each of the proposed definitions is inadequate as a matter of law.

Response: The ANPR described certain options that NMFS was considering related to the ZMRG and solicited comments related to these options or to identify new options. There were no proposed definitions in the ANPR. This proposed rule, however, addresses "approaching a zero...rate" as described in responses to comments 42, 44, and other comments under the heading "Approaching Zero".

Comment 54: The "insignificant levels" prong of the ZMRG may be interpreted as protecting marine mammal populations, while the "approaching zero" prong is read as protecting individual marine mammals by reducing mortality and serious injury to the lowest possible levels.

Response: See responses to comment 42, 48 and other comments under the heading "Approaching Zero". In addition, in developing and implementing TRPs to achieve the long-term goal of a TRP, NMFS must take into account economics of fisheries, available technologies, and existing fishery management plans.

Comment 55: Option 3 for the Insignificance threshold would be consistent with the ETP dolphin standard, which is an insignificant metric specifically designed by Congress. The current ETP standard actually goes beyond the attainment of an insignificance threshold and calls for the participating nations taking yellow fin tuna in the ETP to reduce dolphin mortality limits progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery.

Response: NMFS proposes to use Option 1, not Option 3, for the insignificance threshold for purposes of MMPA section 118. In addition, see response to other comments under the heading "Approaching Zero".

Comment 56: The ZMRG should serve as a mechanism that fosters the development of technologies or gear modifications that will allow further reduction in mortality. The fisheries industry has proven to be extremely creative in the face of such challenges and will likely develop such methods or gears in both a cost-effective and timely manner.

Response: NMFS agrees. See response to comment 42.

Technology and Economics

Comment 57: The insignificance threshold is the driving mechanism to reduce mortality and serious injury and the incentive for fishermen and scientists to devise economically feasible technologies to meet this objective. We believe NMFS' option to incorporate available technology and economic feasibility into an initial assessment of whether fisheries had achieved the ZMRG by the statutory date is flawed and contrary to Congressional intent and court findings.

Response: NMFS is not proposing consideration of technology and economics as part of the insignificance threshold. However, it will be necessary to take technology and economic feasibility into account in developing and implementing TRPs to reduce mortality and serious injury toward the insignificance threshold.

Comment 58: Although Congress sought to encourage the development of new technology to reduce incidental interactions with marine mammals, it was always clear that ZMRG was satisfied by the use of the best available technology that was technologically and economically feasible to employ.

Response: When Congress amended the meaning of ZMRG in 1981, the House committee recognized that other fisheries (citing the foreign high seas salmon gillnet fishery as an example) had not developed new techniques and equipment for reducing incidental mortality and serious injury. Therefore, the goal in MMPA section 101(a)(2) would remain unchanged for commercial fisheries other than the purse-seine fishery for yellow-fin tuna in the ETP "to stimulate new technology for reducing the incidental taking of marine mammals." (H. R Rep. No. 97–228 at 17–18 (1981)). The goal in MMPA section 101(a)(2) is essentially reiterated in MMPA section 118(b), and section 118(b) does not include any language regarding consideration of technological or economic feasibility. Under MMPA section 118(f), to reduce mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate, TRPs must take into account economics of the fisheries, available technology, and existing fishery management plans.

Comment 59: NMFS requested comment on whether fisheries should be considered to have met the ZMRG if they are below PBR but simply have no other methodologies available to reduce mortality and serious injury to lower levels such as the ZMRG level. The ZMRG stands as an incentive to develop further methods of achieving the ultimate desire of the American people that marine mammal mortality and serious injury be truly incidental and unavoidable.

Response: See response to comment 58.

Comment 60: Related to the question of whether or not a fishery should be determined to have satisfied the ZMRG if incidental mortality and serious injury exceeded a stock's insignificance threshold but suitable technological solutions were not available, stating that a fishery had met the ZMRG simply because of apparent technological difficulties would effectively change the standard to suit the situation, which seems contrary to the long-term goal of achieving a zero mortality and serious injury rate.

Response: Such a fishery would not have achieved target levels of incidental mortality and serious injury as described in the ZMRG. However, as noted in other responses, the MMPA requires that NMFS consider economic feasibility and available technology when developing and implementing plans to reduce mortality and serious injury of marine mammals incidental to commercial fishing.

Comment 61: We strongly disagree with any attempt by NMFS to consider the "feasible economics" of any fishery when determining whether that fishery has reached ZMRG. This is not an option under the MMPA.

Response: Although such considerations are not included in determining whether a fishery has reduced mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate under MMPA section 118(b), such considerations are mandatory in developing and implementing TRPs to reduce incidental mortality and serious injury of marine mammals to the long term goal of TRPs under MMPA section 118(f).

Comment 62: The proposed application of the ZMRG is inconsistent with the original intent of the statute and must be linked to available technology. In testimony (April 6, 2000) before the House Subcommittee on Fisheries Conservation, Wildlife and Oceans, NMFS openly recognized the nexus between the absence of critical gear research and technology and the ability to achieve the ZMRG. Sadly, little has been accomplished to date to reverse this situation as take reduction teams continue to struggle with limited information on stock status, gear technology; and innovation. Implementing a restrictive ZMRG definition in the absence of available technology will prevent the process from moving forward in a constructive common sense manner.

Response: As provided in response to comment 13, NMFS places a high priority on collecting the data necessary to develop and implement TRPs. Unfortunately, available resources are insufficient to provide more complete information on stock status, gear technology, and innovation, and TRPs must be developed on the basis of the available information. NMFS will continue to work with the fishing industry to improve available technology and methods within and outside of the TRP process.

Comment 63: The IDCPA not only established an overall dolphin mortality limit, it also set (as of 2001) stock-specific dolphin mortality limits. These limits were put into place, and became binding, irrespective of the current state of technological development. Thus, in the enactment of the IDCPA, Congress distanced itself from a definition of ZMRG that was solely equated with technological advances. Congressional intent was rather that the establishment of quantifiable mortality limits that approached biologically insignificant levels were to be viewed as both a mechanism and an incentive to encourage commercial fisheries to further reduce marine mammal mortality in order to move toward an ultimate goal of eliminating mortality.

Response: NMFS proposes a stock-specific, quantifiable insignificance threshold in part as an incentive to encourage commercial fisheries to further reduce mortality and serious injury of marine mammals. Thus, the proposed rule to implement the ZMRG as described in MMPA section 118 is similar to the IDCPA, which established stock-specific dolphin mortality limits as an incentive to further reduce incidental mortality and serious injury of dolphins incidental to the purse seine fishery for yellowfin tuna in the ETP.

Comment 64: We support incorporating available technology and economic feasibility into an initial assessment of whether or not fisheries have achieved the ZMRG by the statutory due date as long as it is measurable and defined.

Response: As noted above, the assessment of whether or not fisheries have reduced incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate is independent of available technology and economic feasibility. These factors, however, must be taken into account in developing TRPs to reduce incidental mortality and serious injury once it has been reduced to levels below PBR.

Alternative Approaches

Comment 65: ZMRG should be defined using PBR and a technology standard for species that are not endangered, threatened or depleted. Although applying PBR without any further ZMRG reduction will allow species which are endangered, threatened, or depleted to reach OSP, it may be appropriate to consider a more restrictive numerical standard in order to hasten the achievement of that goal.

Response: The ZMRG does not contain a provision for a technology standard to be included in an assessment of whether commercial fisheries have achieved insignificant levels of incidental mortality and serious injury approaching a zero rate. In addition, the ZMRG is a goal for reducing mortality and serious injury levels even below PBR as is illustrated by short-term and long-term goals for TRPs.

Comment 66: NMFS should adopt a modified version of Option 1 as the most appropriate mechanism for determining when a fishery has met the ZMRG. Option 1 should be modified by adding a second component that compels further reductions in mortality and serious injury for those stocks with high PBR levels. NMFS should determine that a fishery has met the ZMRG only if it results in a level of mortality and serious injury below the threshold established for that goal.

Response: NMFS is proposing Option 1 as the definition of the insignificance threshold. However, NMFS is not proposing a regulatory mechanism to reduce incidental mortality and serious injury to levels below the insignificance threshold for stocks of marine mammals. The ideal of eliminating mortality and serious injury, once insignificance thresholds have been achieved, may be accomplished through incentive rather than regulation. See response to comment 42 and other comments and responses under the "Approaching Zero" heading.

Comment 67: We oppose all three options proposed by NMFS and recommended an alternative consisting of the following elements:

(1) ZMRG = PBR;

(2) the ZMRG should not apply to robust stocks, stocks that are severely

endangered (i.e., PBR ≤5 individuals), or stocks not under an MMPA management program;

(3) the application of ZMRG should be prioritized by the Secretary for stocks that have a small populations size, those that are declining most rapidly, and those whose level of incidental mortality and serious injury has not dropped significantly within 5 years of TRP implementation;

(4) the ZMRG definition must incorporate available technology and economic feasibility;

(5) the Secretary, working cooperatively with the appropriate take reduction team and SRG, should conduct the review and determination regarding the availability of technology and economic feasibility; and

(6) if technology is deemed not available and if a fishery is determined to be above he ZMRG after 5 years under an approved TRP, then the Secretary should work with fishery participants to develop and implement the appropriate technology.

Response: As provided in response to other comments, some portions (points 1–4) of this alternative would be inconsistent with the MMPA; therefore, it does not represent a reasonable alternative for consideration in defining an insignificance threshold under this proposed rule. In accordance with the MMPA, NMFS currently prioritizes the development and implementation of TRPs to address strategic stocks that interact with Category I and II fisheries and that have a small population size, those that are declining most rapidly, and those for which incidental mortality and serious injury exceed a stock's PBR. NMFS will work with take reduction teams and SRGs to review the economics of affected fisheries and the availability of existing technologies as required by the MMPA. NMFS will also work with participants of fisheries to develop and implement technologies to further reduced incidental mortality and serious injury of marine mammals as recommended in point 6 of this comment.

Comment 68: NMFS should consider a three-part approach to defining ZMRG. First, NMFS should adopt as a rule its current definition of ZMRG as set forth as Option 1 of the ANPR. Second, to address Congressional intent to limit incidental mortality of marine mammals as much as possible, if current levels of incidental mortality and serious injury from commercial fishing on a marine mammal population are lower than the Option 1 backstop would allow, ZMRG for each commercial fishery interacting with that population must be set no higher than the current level of takes. Third, to address the Congressional intent that incidental mortality approach a zero rate, NMFS must periodically revisit the levels set for marine mammal populations in each fishery whose rate does not yet fully approach zero, and gradually reduce those levels over a period of years in order to force technology to reduce takes to "insignificant levels approaching a zero mortality and serious injury rate".

Response: This suggested alternative approach has certain merits; however, there are problems, particularly regarding the second and third steps. Setting allowable mortality levels no higher than the current level of takes would include an assumption that the reported or estimated number of takes represents all that are occurring. Observer data are available only for a few selected fisheries; therefore, current levels of incidental mortality and serious injury cannot be verified independently and may exceed current estimates. In addition, the MMPA states that once a fishery has achieved target levels of incidental mortality and serious injury, that fishery does not have to further reduce such mortality and serious injury. If target levels were a sliding scale, a fishery could have achieved its target in one year, and in a later year, when the target had been reduced, the fishery would again be above target mortality and serious injury levels. Such an approach does not lend itself to feasible implementation. Although NMFS does not propose a sliding scale to ratchet down stock-specific insignificant thresholds over time, insignificance thresholds could change as a result of new abundance or productivity estimates.

Comment 69: There are several different ways that NMFS can define the "approaching zero" prong of ZMRG. The simplest would be an actual numerical cap on mortality and serious injury, and such a cap would have to be a low number (i.e., <10). The use of the word "approaching" implies movement; therefore, the "approaching zero" prong of the ZMRG is not static. It would be racheted down closer to zero with each successive year until an actual zero mortality and serious injury rate were achieved. An alternative would be to define "approaching zero" as a rate in relation to some other variable. The key is choosing the right rate and right variable. Perhaps the best way to define it is to use a method similar to the 2–tier approach for classifying fisheries. For the 2–tiered approach, even if the impacts on a given marine mammal stock of all fisheries combined were below insignificant levels, a fishery would not be at ZMRG unless it also individually was responsible for annual mortality and serious injury of no more than a small portion (i.e., 1 percent) of any stock's PBR. Such an approach would be straightforward to carry out and would fully implement the requirements of the ZMRG.

Response: Mortality rates ranging from 2 per 10,000 (endangered whales) to 6 per 1,000 (robust stocks of pinnipeds) marine mammals in the population represent such a small cap as to be approaching a zero mortality and serious injury rate; therefore, the second tier of the approach in this comment is not necessary to fully implement the requirements of the ZMRG.

The Proposed Rule

NMFS proposes that the default target level of mortality and serious injury that would satisfy the ZMRG is 10 percent of any stock's PBR. These targets result in upper limits ranging from 2 animals per 10,000 animals in the population stock for endangered whales to 6 animals per 1,000 in the population for robust pinniped stocks. These initial target levels of incidental mortality and serious injury are the starting points for determining final target levels of mortality and serious injury on a stock-by-stock basis, which may be adjusted on the basis of additional information. For example, in some cases (e.g., gray whale, Eastern North Pacific stock, and northern fur seal, Eastern North Pacific stock) a calculated, rather than default Rmax value is used in PBR calculations. An adjustment for these calculated values in the insignificance threshold would be a straight-forward mathematical substitution.

Using an insignificance threshold that is based upon the PBR equation is subject to the same limitations and assumptions that are found in the PBR calculations. In some cases, particularly for declining stocks, the underlying theory of the logistic model may have crucial assumptions that are not valid. For example, the PBR approach based upon the logistic model indicates that populations should grow if mortality is below sustainable levels. In the case of Steller sea lions, Western U.S. stock; northern fur seals, Eastern North Pacific stock; and Hawaiian monk seals, the populations are declining, and known human-caused mortality and serious injury are insufficient to cause the decline. In these cases, NMFS may use an adjustment to the result of the simple formula for calculating the insignificance threshold to estimate an upper limit to the level of mortality and serious injury that could be considered insignificant.

For North Atlantic right whales, the PBR is zero, which means that any human-caused mortality may impede this stock' recovery to OSP. For right whales, it would be inconceivable to determine that some mortality and serious injury rate above zero would have an insignificant effect on the population; therefore, the insignificance threshold for right whales would be zero mortality and serious injury per 1,000 whales in the population just as the current PBR is zero.

For some stocks of marine mammals, total incidental mortality and serious injury may exceed the insignificance threshold for the stock, yet some fisheries may be having such a small impact on the stock that these fisheries' levels of mortality and serious injury could be insignificant levels approaching a zero mortality and serious injury rate. For these situations, the 1995 proposed rule contained a 2–tiered approach. The first tier was the evaluation of total fishery mortality and serious injury for each stock of marine mammals to determine if such mortality and serious injury is below a stock's insignificance threshold. The second tier was used when total incidental mortality exceeds any stock's insignificance threshold, and provided that a fishery that causes no more than 10 percent of any stock's insignificance threshold would have achieved insignificant levels approaching a zero mortality and serious injury rate.

The interactions among several MMPA sections and NMFS' implementing regulations of these provisions make the 2–tiered approach used in 1995 unnecessary. MMPA section 118(b)(4) directs NMFS to take appropriate action under the TRP process to reduce mortality and serious injury under the ZMRG, MMPA section 118(c)(1)(A) identifies the three categories of fisheries, and MMPA section 118(f)(1) states that TRPs are to be developed for Category I or II fisheries that interact with strategic stocks of marine mammals; there are no provisions to develop or implement a TRP for a Category III fishery.

According to the above provisions of the MMPA, there are no provisions to require through the TRP process that Category III fisheries further reduce mortality and serious injury of marine mammals incidental to their operations. Under existing regulations, Category III fisheries include those fisheries for which incidental mortality and serious injury are no more than 10 percent of the PBR of any stock of marine mammals, which is the insignificance threshold under this proposed rule. Category III fisheries also include those fisheries that, even when total fishery mortality and serious injury exceed 10 percent of a stock's PBR, kill or seriously injure no more than 1 percent of that stock's PBR (which is the mathematical equivalent of 10 percent of the stock's insignificance threshold). Therefore, the result of this proposed rule, other existing regulations, and provisions of the MMPA is identical to the 2–tiered approach that was contained in the ZMRG provisions of the 1995 proposed rule.

Classification

NMFS has prepared a draft EA to analyze the impacts on the human environment of establishing an insignificance threshold to implement the ZMRG. NMFS solicits comments on the draft EA (see Electronic Access) and on the proposed rule.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

"The 2003 List of Fisheries (68 FR 418725, July 15, 2003) includes 39,176 vessels in Category I and II fisheries, which are the fisheries subject to further reduction of mortality and serious injury under the MMPA. Of these vessels, 34 are large entities; therefore, 39,142 small entities may be affected by this proposed rule. The MMPA imposes a general moratorium on the taking of marine mammals except as provided in limited exceptions. This proposed rule would define an insignificance threshold as the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. This definition would not, by itself, place any additional restrictions on the public. Under provisions of the MMPA, a take reduction team must be established and a take reduction plan developed and implemented within certain time frames if a strategic stock of marine mammals interacts with a Category I or II commercial fishery. The long-term goal of a take reduction plan is to reduce mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of affected fisheries, the availability of existing technology, and existing state or regional fishery management plans. Any measures identified in a take reduction plan to reduce incidental mortality and serious injury would require separate rulemaking action before the action could be implemented. Any subsequent restrictions placed on the public to protect marine mammals would be included in separate regulations, and appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures."

Therefore, implementation of this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this proposed rule has been prepared.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This proposedrule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and record keeping requirements.

Dated: April 23, 2004.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, the definition for "Insignificance threshold" is added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Insignificance threshold means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal level for a stock of marine mammals. If

certain parameters (e.g., maximum net productivity rate or the recovery factor in the calculation of the stock's potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification.

* * * * *

[FR Doc. 04–9753 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 83
Thursday, April 29, 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

Forest Service

Notice of Intent To Prepare a Supplement to the Final Environmental Impact Statement for Gypsy Moth Management in the United States: a Cooperative Approach

AGENCIES: Forest Service and Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service and the Animal and Plant Health Inspection Service propose to add the insecticide, tebufenozide (trade name Mimic), to their list of treatments for the control of gypsy moth. The analysis for this proposal builds on the analysis and documentation for the January 16, 1996, Record of Decision for the Gypsy Moth Management in the United States: a Cooperative Approach Final Environmental Impact Statement, which was published in the **Federal Register** on February 15, 1996 (61 FR 5976). The agencies will prepare a Supplemental Environmental Impact Statement (SEIS) to the November 1995 Final Environmental Impact Statement (EIS), Gypsy Moth Management in the United States: a Cooperative Approach, which was published in the **Federal Register** on December 1, 1995 (60 FR 61698).

The 1996 Record of Decision adopted alternative 6 in the final EIS, which consisted of three management strategies: suppression, eradication, and slow-the-spread treatments. Pesticide treatment options in the 1996 Record of Decision included: Bacillus thuringiensus var. kurstaki, diflubenzuron, and nucleopolyhedrosis virus (Gypchek). Other management approaches included mass trapping, mating disruption, and sterile insect release.

In addition to the proposal to add the insecticide, tebufenozide (trade name, Mimic), the agencies propose developing a process for adding other insecticides that are currently unidentified and unregistered insecticides, not available at the current time, that may become available in the future to their list of treatments for control of gypsy moth, if the proposed insecticides are within the range of effects and acceptable risks for the existing list of treatments.

DATES: Comments concerning this notice must be received in writing June 14, 2004.

ADDRESSES: Comments concerning this notice should be addressed to Joseph L. Cook, Gypsy Moth Supplemental EIS Project Leader, Forest Service, Northeastern Area, State and Private Forestry, 180 Canfield Street, Morgantown, WV 26505. Comments also may be submitted via facsimile to (304) 285–1505.

The public may inspect comments received at State and Private Forestry, 180 Canfield Street, Morgantown, West Virginia. Visitors are encouraged to call ahead to (304) 285–1523 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Joseph L. Cook, Gypsy Moth Supplemental EIS Project Leader. at (304) 285–1523.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Estimated Dates for Filing

The draft Supplemental Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and available for public review in March 2005. A 45-day comment period will follow publication of a Notice of Availability of the draft Supplemental Environmental Impact Statement (SEIS) in the **Federal Register**. Comments received on the draft SEIS will be analyzed and considered in preparation of the final SEIS, expected in February 2006. A Record of Decision (ROD) will also be issued and published at that time along with the publication of a Notice of Availability of the final SEIS in the **Federal Register**.

Reviewers Obligation To Comment

The Forest Service and the Animal and Plant Health Inspection Service believe that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service and the Animal and Plant Health Inspection Service at a time when the agencies can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service and Animal and Plant Health Inspection Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

This notice of intent initiates the scoping process which guides the development of the supplement to the environmental impact statement. The Forest Service and the Animal and Plant Health Inspection Service are seeking information and comments from Federal, State, Tribal, and local agencies, as well as individuals and organizations who may be interested in, or affected by the proposed action.

Purpose and Need for Action

The January 16, 1996, Record of Decision for the Gypsy Moth Management in the United States: a Cooperative Approach Environmental Impact Statement published February 15, 1996 (61 FR 5976), identified a need to protect forests and trees of the United States from the adverse effects of the gypsy moth, a non-native insect that alters ecosystems and disrupts people's lives when it feeds heavily on the foliage of trees, shrubs, and other plants. Managers need a full and up-to-date suite of appropriate gypsy moth treatment tools.

A new insecticide, tebufenozide (trade name Mimic), which is registered with the Environmental Protection Agency (EPA) for effective suppression of the gypsy moth, became available after publishing of the January 16, 1996, Record of Decision. Managers need a full and up-to-date suite of appropriate gypsy moth treatment tools to meet the purpose and need of the 1995 Environmental Impact Statement, Gypsy Moth Management in the United States: a Cooperative Approach. Accordingly, there is a need to include tebufenozide in the agencies' list of treatments. There is also a need to provide for the timely and appropriate addition of future gypsy moth treatments as they are registered for use with the Environmental Protection Agency.

Nature of Decision To Be Made

The responsible officials will decide whether or not to add the insecticide, tebufenozide (trade name Mimic), to their list of treatments for control of gypsy moth and whether or not to provide for the addition of other insecticides to their list of treatments for control of gypsy moth, if the other insecticides are within the range of effects and acceptable risks for the existing list of treatments.

Responsible Officials

The responsible official for the Forest Service is the Deputy Chief for State and Private Forestry. The responsible official for the Animal and Plant Health Inspection Service is the Deputy Administrator for Plant Protection and Quarantine.

Use of Comments

All comments received in response to this notice, including the names and addresses when provided, will become a matter of public record and will be available for public inspection and copying. Comments will be summarized and included in the final Supplemental Environmental Impact Statement.

Dated: April 19, 2004.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 04–9688 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, May 17, 2004. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School, O'Neals, CA, 93645. The purpose of the meeting is: discussion on how the RAC can be clearer on the actual types of projects wanted, review Holistic Goal & Evaluation Criteria, review Sierra Business Council book and the Arrowhead presentation.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, May 17, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA, 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Discussion on how to be clear on the actual types of projects requested from the public, (2) review Holistic Goal & Evaluation Criteria, (3) review of Sierra Business Council book, (4) the Arrowhead presentation. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 22, 2004.

David W. Martin,

District Ranger, Bass Lake Ranger District.

[FR Doc. 04–9696 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on May 5, and June 2, 2004 at 6 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: May 5, and June 2, 2004.

ADDRESSES: The meetings will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *begmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include informational presentations, status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: April 22, 2004.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 04–9759 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, May 13th in Susanville, California for a business

meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting May 13th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: National RAC update; monitoring processes update; 2004 cycle 3 schedule; and general business. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, District Ranger and Designated Federal Officer, at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6605.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 04–9760 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of request for nominations for the Agricultural Air Quality Task Force.

SUMMARY: The Secretary of Agriculture intends to reestablish the Agricultural Air Quality Task Force (AAQTF), and requests nominations for qualified persons to serve as members.

DATES: Nominations must be received in writing (*see* **SUPPLEMENTARY INFORMATION** section) by June 14, 2004.

ADDRESSES: Send written nominations to: Elvis Graves, Acting Designated Federal Official, USDA/Natural Resources Conservation Service, Post Office Box 2890, Room 6158-S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Elvis Graves, Acting Designated Federal Official; telephone: (202) 720–3905; fax: (202) 720–2646; e-mail: *elvis.graves@usda.gov.*

SUPPLEMENTARY INFORMATION:

Task Force Purpose

As required by section 391 of the Federal Agriculture Improvement and Reform Act of 1996, the Chief of the Natural Resources Conservation Service (NRCS) shall establish a task force to address agricultural air quality issues. The task force will provide recommendations to the Secretary of Agriculture on development and implementation of air quality policy, and on air quality research needs. The requirements of the Federal Advisory Committee Act apply to this task force.

The task force will:

1. Review research on agricultural air quality supported by Federal agencies;

2. Provide recommendations to the Secretary of Agriculture regarding:

- Air quality and its relation to agriculture based upon sound scientific findings;
- Working to ensure inter-governmental (Federal, State and local) coordination in establishing policy for agricultural air quality and avoiding duplication of efforts;
- Assisting, to the extent possible, Federal agencies in correcting erroneous data with respect to agricultural air quality; and
- Working to ensure that air quality research, related to agriculture, receives adequate peer review and considers economic feasibility.

Task Force Membership

The task force will be made up of United States citizens and be composed of:

1. Individuals with expertise in agricultural air quality and/or agricultural production;

2. Representatives of institutions with expertise in the impacts of air quality on human health;

3. Representatives from agriculture interest groups having expertise in production agriculture;

4. Representatives from state or local agencies having expertise in agriculture and air quality; and

5. An atmospheric scientist.

Task force nominations must be in writing, and provide the appropriate background documents required by the Department of Agriculture (USDA) policy, including Form AD–755. Previous nominees and current task force members who wish to be reappointed must update their candidacy. Service as a task force member shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

A task force member shall serve for a term of 2 years. Task force members shall receive no compensation from NRCS for their service as task force members except as described below.

While away from home or regular place of business as a member of the task force, the member will be eligible for travel expenses paid by NRCS, including *per diem* in lieu of subsistence, at the same rate as a person employed intermittently in the government service, under section 5703 of title 5, United States Code.

Additional information about the AAQTF may be found on the World Wide Web at *http://aaqtf.tamu.edu.*

Submitting Nominations

Nominations should be typed and include the following:

1. A brief summary, of no more than two pages, explaining the nominee's qualifications to serve on the AAQTF;

2. Resume;

3. A completed copy of form AD–755;

4. Any recent publications relative to air quality; and

5. Any letters of endorsement.

Nominations should be sent to Elvis Graves, at the address listed above and postmarked no later than June 14, 2004.

Equal Opportunity Statement

To ensure that recommendations of the task force take into account the needs of under served and diverse communities served by USDA, membership shall include, to the extent practicable, individuals representing minorities, women, and persons with disabilities.

Signed in Washington, DC, on April 19, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04–9744 Filed 4–28–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 042604B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA's Teacher-At-Sea Program.

Form Number(s): None.

OMB Approval Number: 0648–0283.

Type of Request: Regular submission.

Burden Hours: 309.

Number of Respondents: 375.

Average Hours Per Response: 45 minutes to read and complete application; 15 minutes to complete a Health Services Questionnaire; 15 minutes to deliver and discuss

recommendation forms to persons who will fill them out; 15 minutes to complete a recommendation form; and 2 hours for a follow-up report.

Needs and Uses: The Teacher-At-Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels. The respondents are educators who provide information about themselves and their teaching situation and who submit a follow-up report with ideas for classroom applications. Recommendations are also required.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: April 22, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–9755 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 042304D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Licensing of Private Land Remote-Sensing Space Systems.

Form Number(s): None.

OMB Approval Number: 0648–0174.

Type of Request: Regular submission.

Burden Hours: 295.

Number of Respondents: 18.

Average Hours Per Response: License application, 40 hours; amendment, 10 hours; foreign agreement notification (including investment), 2 hours; executive summary, 1 hour; notification of the demise of a system or a decision to discontinue system operations, 2 hours; notification of any operational deviation, 2 hours; submission of data collection restriction plans, 5 hours; submission of operational plans for restricting collection or dissemination of Israeli territory, 3 hours; submission of data flow diagrams, 3 hours; submission of satellite sub-systems drawings, 2 hours; submission of final imaging system specifications, 3 hours; submission of spacecraft operational information when a spacecraft becomes operational, 2 hours; notification of disposition/orbital debris change, 2 hours; notifications of planned purges of information, 2 hours; operational quarterly reports, 3 hours; annual compliance audits, 8 hours; annual operational audits, 10 hours.

Needs and Uses: NOAA has established requirements for the licensing of private operators of remote-sensing space systems. The information in applications and subsequent reports is needed to ensure compliance with the Land Remote-Sensing Policy Act of 1992 and with the national security and international obligations of the United States.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion, quarterly, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: April 22, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–9756 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products From Canada

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

EFFECTIVE DATE: April 29, 2004.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of corrosion-resistant carbon steel flat products from Canada until no later than August 30, 2004. This review covers the period August 1, 2002, through July 31, 2003. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Thomas Gilgunn, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–0780 or (202) 482–4236, respectively.

Background

The Department of Commerce (the Department) received timely requests for administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada, with respect to Continuous Color Coat, Ltd. ("CCC"), Dofasco Inc. ("Dofasco"), Ideal Roofing Company, Ltd. ("Ideal Roofing"), Impact Steel Canada, Ltd. ("Impact Steel"), Russel Metals Export ("Russel Metals"), Sorevco and Company, Ltd. ("Sorevco"), and Stelco Inc. ("Stelco"). On September 30, 2003, the Department published a notice of initiation of this administrative review for the period of August 1, 2002, through July 31, 2003 (68 FR 56262).

On December 19, 2003, the Department rescinded the administrative reviews of CCC, Impact Steel, and Ideal Roofing (68 FR 70764). On March 30, 2004, the Department rescinded the administrative review of Russel Metals (69 FR 16521). After these rescissions, the only companies still subject to review were Stelco, Dofasco, and Sorevco.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of analyzing Stelco's, Dofasco's and Sorevco's cost calculations, and the issues concerning Dofasco's and Sorevco's affiliation, it is not practicable to complete this review by the current deadline of May 2, 2004.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than August 30, 2004. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 21, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–9746 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042204F]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The GOM Rolling Closure Areas; the Days-at-Sea (DAS) notification requirements; and the effort-control program (DAS).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before May 14, 2004.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA498@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on Manomet Rigid-Mesh Panel Gear Study." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Manomet Rigid-Mesh Panel Gear Study." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The Manomet Center for Conservation Sciences (Manomet) submitted an application for an EFP on April 2, 2004. Information completing the application was received on April 14, 2004. The proposed project, "Development and Testing of a Novel 'Rigid-Mesh' Bycatch Reduction Device for the Gulf of Maine Groundfish Fisheries," is the second year of the project funded by the Northeast Consortium.

The main purpose of the project is to test a fishing gear net modification that utilizes a panel of rigid mesh inserted between the extension and codend of a conventional otter trawl. The researchers seek to assess the applicability of the rigid mesh panel in the GOM NE multispecies fishery towards reducing regulatory discard. The proposed panel would be 2 meters (6.5 ft) in length and entirely constructed of elongate meshes 60 mm (2.36 in) by 200 mm (7.87 in) long and would be inserted along the net between the extension and a conventional 16.5–cm (6.5–inch) diamond mesh codend. The panel would extend around the entire circumference of the net. The net would be filmed inside and outside to verify proper construction and document fish behavior. The experimental design for the project calls for towing the experimental net and the conventional net in alternate tows (A-B-B-A pattern). No more than a total of 40 tows would be performed during the fishing trials.

The main species that would expected to be caught under this EFP are: 45.40 kg (100 lb) of yellowtail flounder; 9 kg (20 lb) of winter flounder; 45.40 kg (100 lb) of summer flounder; 45.40 kg (100 lb) of American plaice; 138 kg (305 lb) of cod; 11 kg (25 lb) of haddock; 490 kg (1,080 lb) of skates; 166 kg (365 lb) of spiny dogfish; and 1,601 kg (3,530 lb) of monkfish. These estimates are based, in part, upon two days of testing which occurred in 2003. There will be no retention of undersized fish onboard the vessels. The project would take place between June 1–July 31, 2004. The study would occur in two areas: Area 1 is off the Maine coast in 30–minute squares 138, 139, 140, 146, and 147; and Area 2 is off of Cape Cod in 30–minute squares 123 and 124. At no time is fishing to occur inside year-round closure areas. Exemption from 10 DAS, 5 per vessel, is requested to conduct the experiment. DAS exemptions are requested as a commercial DAS level of effort would not likely be realized and profit from the sale of fish would be used to offset research costs associated with data analysis, report production, travel, and leasing the vessels.

This EFP would allow for exemptions from the Northeast (NE) Multispecies Fishery Management Plan (FMP) as follows: The GOM Rolling Closure Areas specified at 50 CFR 648.81(g)(1)(i)-(v); the Days-at-Sea (DAS) notification requirements specified at § 648.10; and the effort-control program (DAS) as specified at § 648.82(a).

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

Dated: April 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–956 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042004B]

Marine Mammals; File No. 350–1739

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Brendan Kelly, Ph.D., University of Alaska Southeast, 11120 Glacier Highway, Juneau, Alaska 99801 has been issued a permit to conduct research on ringed seals (*Phoca hispida*) in Alaska.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 17, 2004, notice was published in the **Federal Register** (69 FR 12643) that a request for a scientific research permit to take ringed seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the permitted research is to study the site fidelity, behavior, and ecological significance of home ranges of ringed seals in Alaska through monitoring, capturing, tagging, using video-mounted cameras, and genetics sampling of seals primarily in the Prudhoe Bay, Alaska region of the Beaufort Sea, and also along the coasts of the Bering, Chukchi, and other areas of the Beaufort Sea in Alaska.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: April 23, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–9754 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on May 19, 2004, from 0930 to 2000 and May 20, 2004 from 0830 to 1500.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: April 23, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–9662 Filed 4–28–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Strategic Strike Skills will meet in closed session on May 14, 2004, in Arlington, VA. The Task Force will assess the future strategic strike force skills needs of the Department of Defense (DoD).

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Last summer the DSB assessed DoD needs for future strategic strike forces. Assessed was the application of technology for non-nuclear weapons systems, communications, planning systems, and intelligence as well as the integration of strategic strike with active defenses as part of the new triad. This "skills" study will complement the previous strategic forces study by focusing on the people and the skills necessary to develop, maintain, plan, and successfully execute future strategic strike forces. At this meeting, the Task Force will: assess current skills available, both nuclear and non-nuclear of current long-range strike forces; identify, assess and recommend new/modified/enhanced skill sets necessary for successful future strike force development, planning, and operations; and recommend a strategy for the successful evolution of the current skills to those required by future strike forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: April 23, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–9663 Filed 4–28–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency.

ACTION: Notice to amend and delete records systems.

SUMMARY: The Defense Contract Audit Agency is amending a notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on June 1, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Senior Advisor, Defense Contract Audit Agency, Information and Privacy, CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767–1005.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed action is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system.

Dated: April 23, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
RDCAA 152.7

SYSTEM NAME:

Clearance Certification (May 18, 1999, 64 FR 26947).

REASON:

These records are now being maintained under the DoD-wide Privacy Act system of records notice F031 DoD A, entitled "Joint Personnel Adjudication System (JPAS)" last published in the Federal Register on November 29, 2002, at 67 FR 71152.

AMENDMENTS
RDCAA 152.1

SYSTEM NAME:

The Enhanced Access Management System (TEAMS) (January 11, 2002, 67 FR 1448).

CHANGES:

* * * * *

PURPOSE(S):

Add to the second paragraph "and the Joint Personnel Adjudication System".

* * * * *

RDCAA 152.1

SYSTEM NAME:

The Enhanced Access Management System (TEAMS).

SYSTEM LOCATION:

Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, Social Security Number, date and place of birth, citizenship, position sensitivity; accession date, type and number of DCAA identification, position number, organizational assignment, security adjudication, clearance, eligibility, and investigation data.

AUTHORITY FOR MAINTENANCE ON THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; E.O. 10450, Security Requirements for Government Employees, as amended; E.O. 12958, Classified National Security Information; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the DCAA Security Office with a ready reference of security information on DCAA personnel.

To submit data on a regular basis to the Defense Clearance and Investigations Index and the Joint Personnel Adjudication System.

To provide the DCAA Drug Program Coordinator with a listing of individuals who hold security clearances for the purpose of creating the drug testing pool, from which individuals are randomly chosen for drug testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by Social Security Number or name of employee.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records are retained in the active file until an employee separates from the agency. At that time, records are moved to the inactive file, retained for five years, and then deleted from the system. Hard copy listings and tapes produced by this system are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish name, Social Security Number, and approximate date of their association with DCAA.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish name, Social Security Number, and approximate date of their association with DCAA.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information, other than data obtained directly from individual employees, is obtained by DCAA Headquarters Security and Regional Office Personnel Divisions, and Federal Agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (DMIS) (January 11, 2002, 67 FR 1448).

CHANGES

* * * * *

SYSTEM LOCATION:

Insert "System design and Development Branch," after "Information Technology Division".

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (DMIS).

SYSTEM LOCATION:

Defense Contract Audit Agency, Information Technology Division, System Design and Development Branch, 4075 Park Avenue, Memphis, TN 38111–7492.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing contractor information; records containing reimbursable billing information; name Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an on-line database and on magnetic tape at secure offsite storage.

RETRIEVABILITY:

Records are retrieved by organization levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–74922.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES;

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–9665 Filed 4–28–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy. U.S. Patent Application Serial Number 10/807574 entitled "Integrated Maritime Portable Acoustic Scoring and Simulator Control and Improvements."

ADDRESSES: Requests for copies of the Patent Application cited should be directed to the Naval Surface Warfare Center, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: April 21, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–9667 Filed 4–28–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; METOCEAN Data System

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant METOCEAN Data System a revocable, nonassignable, partially exclusive license, with exclusive fields of use in portable acoustic scoring, acoustic sounding and simulator control, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 10/807574 entitled "Integrated Maritime Portable Acoustic Scoring and Simulator Control and Improvements."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 20, 2004.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare

Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: April 21, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–9666 Filed 4–28–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB) concerning the Renewable Energy Production Incentive. The package covers the collection of information concerning annual applications from the owners of qualified renewable energy generation facilities for the consideration of renewable energy production incentive payments. This information is used by the Department to determine if the applicant's facility qualifies for these payments and to determine the amount of net electricity produced that qualifies for these payments. This information is critical to ensure that the Government has sufficient information to ensure the proper use of public funds for these incentive payments. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 28, 2004. If you anticipate difficulty in submitting comments within that period, contact the persons listed in the **ADDRESSES** section as soon as possible.

ADDRESSES: Written comments may be sent to: William J. Raup, Office of Weatherization and Intergovernmental Programs (EE–2K), Department of Energy, Washington, DC 20585, or by fax at (202) 586–1233 or (202) 586–3485 or by e-mail at *william.raup@ee.doe.gov.*

Sharon A. Evelin, Acting Director, Records Management Division, IM–11/ Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290. or by fax at 301–903–9061 or by e-mail at *sharon.evelin@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the two individuals specified in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No. 1910–0068; (2) Package Title: Renewable Energy Production Incentive; (3) Type of Review: renewal; (4) Purpose: To provide required information to receive consideration for payment for qualified renewable energy electricity produced in the prior fiscal year; (5) Respondents: 75; (6) Estimated Number of Burden Hours: 450.

Statutory Authority: Energy Policy Act of 1992, P.L. 102–486, 42, U.S.C. 13317

Issued in Washington, DC on April 23, 2004.

Sharon A. Evelin,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–9710 Filed 4–28–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7654–8]

Agency Programs Subject to Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is publishing an updated list of programs which States may choose to review under their official Executive Order 12372 (Intergovernmental Review of Federal Programs) process and under section 204 of the Demonstration Cities and Metropolitan Development Act. This notice announcing the list of EPA programs and activities subject to intergovernmental review is required under 40 CFR 29.3.

DATES: This list is effective April 2004.

FOR FURTHER INFORMATION CONTACT: Marla Sheppard, 202–564–5954.

SUPPLEMENTARY INFORMATION: EPA published a notice (86 FR 26647, Nov. 26, 1986) in the **Federal Register** which listed EPA programs subject to review under Executive Order 12372 and section 204 of the Demonstration Cities and Metropolitan Development Act. The following list provides a more current catalogue of EPA programs and activities which States may choose to review under their official Executive Order 12372 process. Programs which may also be subject to review under section 204 of the Demonstration Cities and Metropolitan Development Act are identified with an asterisk (*). Executive Order 12372 exempts tribal programs from intergovernmental review. Accordingly, tribal initiatives within EPA programs are excluded from the intergovernmental review process. For additional information about the following EPA programs, please visit the Catalog of Federal Domestic Assistance (CFDA) Web site at *http://www.cfda.gov* or *http://www.epa.gov/ogd/grants/cfda.htm.*

PROGRAMS SUBJECT TO EXECUTIVE ORDER 12372 AND SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT

CFDA No.	Program Title
66.001*	Air Pollution Control Program Support.
66.032	State Indoor Radon Grants.
66.033	Ozone Transport.
66.034	Surveys, Studies, Investigations, Demonstrations and Special Purpose Activities relating to the Clean Air Act.
66.305	Compliance Assistance—Support for Services to the Regulated Community and Other Assistance Providers.

PROGRAMS SUBJECT TO EXECUTIVE ORDER 12372 AND SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT—Continued

CFDA No.	Program Title
66.418*	Construction Grants for Wastewater Treatment Works.
66.419*	Water Pollution Control State and Interstate Program Support.
66.424	Surveys, Studies, Demonstrations and Special Purpose Grants—Section 1442 of the Safe Drinking Water Act.
66.432	State Public Water System Supervision.
66.433*	State Underground Water Source Protection.
66.436	Surveys, Studies, Investigations, Demonstrations, and Training Grants and Cooperative Agreements—Section 104(b)(3) of the Clean Water Act.
66.437	Long Island Sound Program.
66.439	Targeted Watershed Initiative.
66.454*	Water Quality Management Planning.
66.456*	National Estuary Program.
66.458	Capitalization Grants for Clean Water State Revolving Funds.
66.460*	Nonpoint Source Implementation Grants.
66.461*	Wetland Program Development Grants.
66.463*	Water Quality Cooperative Agreements.
66.466*	Chesapeake Bay Program.
66.467	Wastewater Operator Training Grant Program (Technical Assistance).
66.468*	Capitalization Grants for Drinking Water State Revolving Funds.
66.469	Great Lakes Program.
66.471*	State Grants to Reimburse Operators of Small Water Systems for Training and Certification Costs.
66.472*	Beach Monitoring and Notification Program Implementation Grants.
66.475	Gulf of Mexico Program.
66.476	Vulnerability Assessments and Related Security Improvements at Large Drinking Water Utilities.
66.477	Vulnerability Assessments and Related Security Improvements at Large Privately-Owned Community Drinking Water Utilities.
66.500	Environmental Protection Consolidated Research.[1]
66.509	Science To Achieve Results (STAR) Program.[1]
66.510	Surveys, Studies, Investigations and Special Purpose Grants within the Office of Research and Development.[1]
66.511	Office of Research and Development Consolidated Research.[1]
66.512	Regional Environmental Monitoring Assessment Program.[1]
66.515	Greater Opportunities: Research Program.[1]
66.516	National Student Design Competition for Sustainability.[1]
66.600*	Environmental Protection Consolidated Grants—Program Support.
66.604	Environmental Justice Grants to Small Community Groups.
66.605	Performance Partnership Grants.
66.606*	Surveys, Studies, Investigations and Special Purpose Grants.
66.609	Protection of Children and the Aging as a Fundamental Goal of Public Health and Environmental Protection.
66.610	Surveys, Studies, Investigations and Special Purpose Grants within the Office of the Administrator.
66.611	Environmental Policy and Innovative Grants.
66.707	TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals.
66.708	Pollution Prevention Grants Program.
66.709	Capacity Building Grants and Cooperative Agreements for States and Tribes.
66.716	Surveys, Studies, Investigations, Training Demonstrations and Educational Outreach.
66.717*	Source Reduction Assistance.
66.801*	Hazardous Waste Management State Program Support.
66.802*	Superfund State, Political Subdivision, and Indian Tribe Site Specific Cooperative Agreements.
66.804*	State and Tribal Underground Storage Tanks Program.
66.805*	Leaking Underground Storage Tank Trust Fund Program.
66.806	Superfund Technical Assistance Grants (TAG) for Citizen Groups at Priority Sites.
66.808	Solid Waste Management Assistance.
66.809	Superfund State and Indian Tribe Core Program Cooperative Agreements.
66.810	Chemical Emergency Preparedness and Prevention Technical Assistance Grants Program.
66.811	Brownfield Pilots Cooperative Agreements.
66.813	Alternative or Innovative Treatment Technology Research, Demonstration, Training, and Hazardous Substance Research Grants.
66.814	Brownfields Training, Research, and Technical Assistance Grants and Cooperative Agreements.
66.816	Headquarter and Regional Underground Storage Tanks Program.
66.817	State and Tribal Response Program Grants.
66.818	Brownfields Assessment and Cleanup Cooperative Agreements.
66.931	International Financial Assistance Projects Sponsored by the Office of International Affairs.

Direct Development Activity Title	
(N/A)*	Real property acquisition or disposition, including obtaining major leases or easements.
(N/A)*	Construction of new EPA facilities.
(N/A)*	EPA issued plans and permits which do not impact interstate areas.

[1] Selection is limited to proposals administered by the Office of Research and Development which (a) require an Environmental Impact Statement (EIS); or (b) do not require an EIS but will be newly initiated at a particular site and require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (c) have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within that geographic area. Otherwise, national research programs are exempt from review.

Authority: E.O. 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197; 40 CFR part 29.

Sherry A. Kaschak,

Acting Assistant Administrator, Office of Administration and Resources Management.

[FR Doc. 04–9721 Filed 4–28–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the instructions for the Consolidated Reports of Condition and Income (Call Report) and the Thrift Financial Report (TFR), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revised instructions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before June 28, 2004.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to "Consolidated Reports of Condition and Income, 7100–0036," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Steven F. Hanft, Clearance Officer, Legal Division, Room MB–3046, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Consolidated Reports of Condition and Income, 3064–0052." Commenters are encouraged to submit comments by electronic mail to *comments@fdic.gov*. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0023, Fax number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov*. Due to temporary disruptions in mail service in the Washington, DC, area, commenters are encouraged to send comments by fax or e-mail, if possible. OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or electronic mail to *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of Call Report forms can be obtained at the FFIEC's Web site (*www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained at the OTS's Web site (*www.ots.treas.gov/pagehtml.cfm?catNumber=15*).

OCC: John Ference, Acting OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Long, Acting Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Paperwork Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552,

by electronic mail at *marilyn.burton@ots.treas.gov.*

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the following currently approved collections of information:

The effect of the proposed revisions to the reporting requirements will vary from institution to institution depending on the institution's involvement with the types of activities or transactions to which the proposed instructional changes apply. The agencies estimate that since the proposed instructional revisions change how existing information is reported in the Call Report and TFR, implementation of these instructional changes will result in little or no change in the current reporting burden imposed by the Call Report and TFR. The following burden estimates include the proposed revisions.

Report Title: OCC, Board, and FDIC: Consolidated Reports of Condition and Income (Call Report). OTS: Thrift Financial Report (TFR).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only). TFR: OTS Form No. 1313.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,126 national banks.

Estimated Time per Response: 46.40 burden hours.

Estimated Total Annual Burden: 394,589 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 952 state member banks.

Estimated Time per Response: 52.36 burden hours.

Estimated Total Annual Burden: 199,369 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,332 insured state nonmember banks.

Estimated Time per Response: 37.04 burden hours.

Estimated Total Annual Burden: 790,085 burden hours.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 925 insured savings associations.

Estimated Time per Response: 36.4 burden hours.

Estimated Total Annual Burden: 134,679 burden hours.

The estimated time per response for the Call Report and the TFR is an average, which varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.*, size distribution of institutions, types of activities in which they are engaged, and, for banks, existence of foreign offices). For the Call Report, the average reporting burden includes the effect on burden during 2004 of the new Central Data Repository (CDR) system for processing Call Reports. The time per response for the Call Report is estimated to range from 15 to 600 hours, depending on an individual institution's circumstances, before considering the effect of voluntary testing and global enrollment activities related to the CDR. The reporting burden for testing and enrollment activities for an individual institution is estimated to range from 16 to 69 hours in 2004, depending on the institution's level of participation.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 CFR 563.180 (for savings associations). Except for selected items, these information collections are not given confidential treatment.

Abstract

Institutions file Call Reports and TFRs with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. In addition, Call Reports and TFRs provide the most current statistical data available for evaluating institutions' corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports and TFRs are also used to calculate all institutions' deposit insurance and Financing Corporation assessments and national banks' and savings associations' semiannual assessment fees.

Current Action

I. Overview

This joint notice and request for comment addresses two proposed instructional changes that will affect how institutions report certain information in the Call Report and TFR. The agencies are not proposing to change the report forms themselves. First, the agencies are proposing to change and clarify the reporting requirements for certain securitized loans that are 90 days or more past due and subject to seller buy-back provisions. This first change will primarily affect institutions that originate or purchase and then securitize certain residential mortgage loans. Second, the agencies are proposing to change the reporting requirements for "when-issued" securities from settlement date accounting to trade date accounting. This change would affect institutions filing the Call Report that purchase or sell "when-issued" securities and will not affect institutions filing the TFR because the TFR instructions already require this reporting treatment.

Type of Review: Revision of currently approved collections.

The proposed instructional revisions to the Call Report and the TFR have been approved for publication by the FFIEC. The agencies intend to implement the proposed Call Report and TFR changes as of the September 30, 2004, report date. Nonetheless, as is customary for Call Report and TFR changes, if the information to be reported in accordance with the revised instructions is not readily available, institutions are advised that they may report reasonable estimates of this information for the report date as of which the proposed changes first take effect.

II. Discussion of Proposed Instructional Revisions

A. GNMA Buy-Back Option

Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Guide, the issuer of GNMA securities has the option to repurchase individual Federal Housing Administration (FHA), Department of Veterans Affairs/Veterans Administration (VA), and Farmers Home Administration (FmHA) loans backing the securities when the loans meet certain delinquency criteria. Such a buy-back option is considered a conditional option under Financial Accounting Standards Board (FASB) Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (FAS 140), until the delinquency criteria are met, at which time the option becomes unconditional.

When the loans backing a GNMA security (GNMA loans) are initially securitized, the issuer of the security treats the transaction as a sale for accounting purposes under FAS 140

because the option is conditional and the issuer has surrendered control of the loans. Accordingly, the loans are removed from the issuer's balance sheet. When individual loans later meet GNMA's specified delinquency criteria and are eligible for repurchase, the issuer is deemed to have regained control of these loans and, under FAS 140, the loans can no longer be reported as sold. These individual delinquent GNMA loans must be brought back onto the issuer's books as assets, along with an offsetting liability, regardless of whether the issuer intends to exercise the buy-back option.

Recently, the agencies became aware of several inconsistencies in the way issuers of GNMA securities have reported certain information in their Call Reports and TFRs relating to GNMA loans after they have become delinquent. In this regard, the agencies found that some institutions were reporting GNMA loans that were eligible for repurchase, as well as those that have actually been repurchased, as "Other assets" on the balance sheet. Other institutions were reporting these assets as "Loans." Based on discussions with representatives of the FASB, the Securities and Exchange Commission, and other industry personnel, the agencies concluded that "Loans" is the appropriate balance sheet classification for these assets and included such guidance in the December 2003 Call Report Supplemental Instructions and TFR Financial Reporting Bulletin.[1]

However, additional inconsistencies in practice still exist regarding:

- the appropriateness of reporting repurchased GNMA loans, and GNMA loans that are eligible for repurchase, as past due loans in Call Report Schedule RC–N and TFR Schedule PD, and
- the appropriate balance sheet classification of foreclosed real estate that had been the collateral for GNMA loans, *i.e.*, whether the foreclosed real estate should be reported as "other real estate owned" or "other assets."

The agencies December 2003 guidance did not address these reporting issues.

The agencies' objective is to ensure consistent accounting and reporting for these loans and foreclosed real estate. However, achieving consistency will require changes to current practice for some institutions and changes and clarifications to existing regulatory reporting guidance. Accordingly, we are seeking comments on a number of proposed changes.

Delinquency Status. For delinquent GNMA loans that are repurchased when they are "in foreclosure status" at the time of repurchase, current Call Report and TFR instructions permit institutions not to report these loans as past due provided the government reimbursement process is proceeding normally. However, some institutions are applying this exception to their other rebooked delinquent GNMA loans, whether repurchased or eligible for repurchase, and not reporting them as past due in the Call Report and TFR. Other institutions report all rebooked delinquent GNMA loans, except those covered by the exception, as past due.

The exception from past due reporting for GNMA loans "in foreclosure status" predates FAS 140. More specifically, when this exception was added to the Call Report and TFR instructions, the accounting standards then in effect did not require the seller to rebook delinquent GNMA loans for which the repurchase option became unconditional unless the loans were actually repurchased. Institutions could choose to repurchase delinquent GNMA loans "in foreclosure status" from the loan pool backing a GNMA security rather than continuing to make monthly advances to the pool on these delinquent loans while initiating foreclosure action. Until the exception was added, an institution that repurchased delinquent loans in foreclosure status had to report the loans as past due in its regulatory reports whereas an institution making monthly advances on delinquent loans without repurchasing them did not have to report these loans as past due. The creation of the exception eliminated this reporting difference, which depended on how the institution chose to handle its servicing responsibilities. In contrast, under FAS 140, delinquent GNMA loans must be rebooked as assets as soon as the repurchase option becomes unconditional, whether or not the loans are repurchased. Consequently, the difference in balance sheet treatment for repurchased delinquent GNMA loans versus those eligible for repurchase that led the agencies to create the exception from past due reporting no longer exists.

Thus, the agencies are proposing that all delinquent rebooked GNMA loans (including those for which the institution is taking steps to foreclose on the real estate collateral at the time of repurchase, but for which the sheriff's sale has not yet taken place) should be treated consistently and reported as past due on Call Report Schedule RC–N and TFR Schedule PD in accordance with their contractual terms. Some institutions that are GNMA issuers have objected to the possibility of having to report delinquent GNMA loans as past due, so the agencies are now seeking industry comment on the reporting of all delinquent rebooked GNMA loans as past due residential mortgage loans. It should be noted that such delinquent GNMA loans would also be reported in the items for past due loans wholly or partially guaranteed by the U.S. Government on Call Report Schedule RC–N and TFR Schedule PD. These items provide a method for users of the Call Report and TFR to identify the amount of delinquent loans that are not guaranteed by the U.S. Government.

The agencies are seeking comment on whether this past due reporting approach is appropriate and whether there are alternative methods to ensure that all delinquent loans are treated consistently.

Foreclosed Real Estate. There are also inconsistencies in how institutions, for balance sheet purposes, report the real estate collateral backing delinquent GNMA loans on which they have foreclosed. Some institutions report the foreclosed real estate as "other real estate owned." Other institutions report it as "other assets" because they consider their asset to be a receivable from the U.S. Department of Housing and Urban Development (HUD), the federal entity that administers the GNMA program.

The agencies understand that in the case of FHA properties (which eventually go back to HUD), the institution forecloses on the real estate collateral for delinquent loans in its own name. The institution must then hold the property through the state-specified redemption, confirmation, or ratification periods. The length of these periods varies from state to state. The property is not conveyed to HUD until it is "clean" in terms of the completion of the redemption period and the eviction of any occupants of the property, which could be an extended period of time following foreclosure. HUD is not obligated to receive the property until the successful completion of the entire legal process.

In the case of VA loans, the institution also forecloses on the real estate collateral in its own name. If the institution wins the bid at the sheriff's sale, it instructs the sheriff to title the property in the name of the VA. However, as with FHA loans, title is not actually conveyed to the VA until the end of the redemption period, which may be several months after foreclosure.

The agencies understand that in both FHA and VA foreclosures, HUD cannot

[1] The December 2003 Call Report Supplemental Instructions and TFR Financial Reporting Bulletin can be accessed at *http://www.ffiec.gov/PDF/FFIEC_forms/FFIEC031_041_suppinst_200312.pdf* and *http://www.ots.treas.gov/docs/78166.pdf*, respectively.

accept the property nor can the government guarantee or insurance be honored until all legal actions pursuant to foreclosure have been completed.

A rationale that institutions have given for reporting the foreclosed property as an "other asset" is that the financial institution essentially is acting as an agent for HUD. The institution makes arrangements for a sheriff's sale in its own name and bids for the property in its name. Institutions that follow this reporting treatment then record a receivable from HUD representing the amount due under the government guarantee or insurance. Following the completion of all legal proceedings and acceptance of the property, HUD is responsible for disposing of the real estate.

However, the process for resolving foreclosed properties that served as collateral for mortgage loans backing GNMA securities may result in an institution's involvement with the property for an extended period of time following the sheriff's sale. Accordingly, as with other real estate collateral on which an institution forecloses, an institution that forecloses on real estate backing delinquent GNMA loans it has rebooked as assets should report the property as "other real estate owned" on the balance sheet in the Call Report and TFR. The foreclosed property should be reported in this manner beginning at the time of foreclosure until it has been sold, transferred to HUD, or otherwise disposed of.

The agencies request comments on the appropriateness of this balance sheet treatment.

B. "When-Issued" Securities

The agencies have identified a potential difference in the accounting for "when-issued" securities between the Call Report instructions and generally accepted accounting principles (GAAP). Specifically, the Call Report Glossary entry for "When-Issued Securities Transactions" indicates that "[p]urchases and sales of when-issued securities for which settlement date has not occurred as of the report date are *not* to be reflected in the balance sheet, Schedule RC, until settlement date." Accordingly, the Call Report instructions indicate that institutions should follow "settlement date accounting" for when-issued securities. Under GAAP, all securities are required to be reported on the balance sheet as of the "trade date." Specifically, paragraph 5.92 of the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide for Banks and Savings Institutions (May 2000 edition) indicates that purchases and sales of securities are recorded on the balance sheet as of the trade date ("trade date accounting").

The requirement that institutions account for when-issued securities at settlement date is a longstanding regulatory reporting practice. However, given that GAAP and industry practice seem to predominantly follow trade date accounting, the agencies are proposing to eliminate the Call Report instruction that indicates institutions should follow settlement date accounting for when-issued securities and replace it with one that calls for trade date accounting for such securities.

In addition, the agencies would remove the references to commitments to purchase and sell when-issued securities from the instructions for Schedule RC–L, item 9, "All other off-balance sheet liabilities," and item 10, "All other off-balance sheet assets," respectively. The instructions would instead indicate that, consistent with the reporting of other purchased securities under trade date accounting, an institution's purchases of when-issued securities should be reported on the balance sheet as "Held-to-maturity securities," "Available-for-sale securities," or "Trading assets," as appropriate, when recorded on the trade date. The selling of when-issued securities is considered a trading activity.

Furthermore, the agencies would revise the Call Report Glossary entry for "Trade Date and Settlement Date Accounting" to clarify that institutions should follow trade date accounting for all securities, including when-issued securities. In so doing, this Glossary entry's reference to the conditions under which settlement date accounting is acceptable would be eliminated.

The proposed change will improve regulatory reporting by eliminating a potential unnecessary difference between the Call Report instructions and GAAP. The agencies request comment on whether these instructional changes are appropriate and whether they would be consistent with institutions' current accounting practices. In this regard, the agencies request comment on whether there is justification for retaining the current settlement date accounting treatment for when-issued securities when the accounting for all other securities is based on trade date. The agencies also request comment on the appropriateness of reporting purchases of when-issued securities on the balance sheet as "Held-to-maturity securities," "Available-for-sale securities," or "Trading assets," as appropriate, on the trade date.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report and TFR collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: April 19, 2004.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, April 22, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 20th day of April, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: April 20, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–9772 Filed 4–28–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 04–06]

San Antonio Maritime Corp., and Antilles Cement Corp., v. Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by the San Antonio Maritime Corp., and Antilles Cement Corp., ("Complaints") against the Puerto Rico Ports Authority ("Respondent"). Complaints contend that Respondent has engaged in unjust, unreasonable, and unlawful practices in violation of section 10(d)(1); unreasonably refused to deal or negotiate in violation of sections 10(d)(3) and 10(b)(10); and imposed undue or unreasonable prejudice or disadvantage in violation of section 10(d)(4), of the Shipping Act of 1984, 46 U.S.C. app. 1709(d)(1), (3), and and (4), and 1709(b)(10). As a direct result of these allegations, Complainants claim that they have suffered and will continue to suffer substantial ongoing economic damages and injury valued at not less than $20 million. Complainants seek an order directing Respondent to cease and desist; establish and put into force such practices as the Commission determines to be lawful and reasonable; pay Complainants reparations, interest, costs, and attorneys fees and any other damages to be determined; and take any other such action or provide any other such relief as the Commission determines to be warranted.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 26, 2005 and a final decision of the Commission shall be issued by August 24, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–9737 Filed 4–28–04; 8:45 am]

BILLING CODE 6730–01–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 May 13, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. John Wesley Templer Sr. and Jacqueline Sue Templer, Amarillo, Texas; to acquire voting shares of Western Dakota Holding Company, Timber Lake, South Dakota, and thereby indirectly acquire voting shares of Western Dakota Bank, Timber Lake, South Dakota.

Board of Governors of the Federal Reserve System, April 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–9687 Filed 4–28–04; 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 May 24, 2004.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Farmers Capital Bank Corporation, Frankfort, Kentucky; to acquire 100 percent of the voting shares of Citizens Bank (Kentucky), Inc., Georgetown, Kentucky.

Board of Governors of the Federal Reserve System, April 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–9686 Filed 4–28–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Service is publishing the following summary of a

proposed collection 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.

Please note that we are requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506c(2)(A) of the (OMB) the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the Congressional Conference Report agreement accompanying the Fiscal Year 2004 Consolidated Appropriations Act (Pub. L. 108–199), directs the Secretary to request Title X grantees to voluntarily provide the following information regarding abortions: the number of Title X-funded sites that also provide abortions with non-Federal funds. The conferees expect the Secretary to provide a report to the House and Senate appropriations committees four months after enactment of this Act summarizing the volunteered information.

Type of Information Collection Request: Emergency-Approval;

Title of Information Collection: Family Planning Survey: Title X-funded sites that also provide abortion;

Form/OMB No.: OS–0990–New;

Use: The purpose of this survey is to collect information about the number of Title X-funded family planning service delivery sites that also provide abortions with non-Federal funds. The Conference Report agreement accompanying the Fiscal Year 2004 Consolidated Appropriations Act (Pub. L. 108–199), directs the Secretary to request that Title X grantees voluntarily provide the following information regarding abortions: the number of Title X-funded sites that also provide abortions with non-Federal funds. The Conference Report language also states that the Secretary's request shall be limited to the above question with no additional information regarding the identity of the clinics or the patients receiving abortions. The Conferees directed that when the Secretary requests the information, the letter of request should contain a statement making it clear that the grantees' responses shall be voluntary and without consequence, or threat of consequence, to non-responsiveness. The conferees further directed that the records documenting this information shall be retained by the grantee, and shall not be provided to the Secretary nor any other Federal, State, or local official or entity.

This effort will involve a one-time survey of all family planning service grantees who will be requested to voluntarily provide information on all Title X supported service delivery sites (an estimated 4,600 clinic sites across the country). The summary information provided by the service grantees will then be compiled by staff in the OFP central office. After the data is collected it will be used as the basis of a report to Congress summarizing the volunteered information.

Frequency: One-Time;

Affected Public: Public agencies and non-profit organizations;

Annual Number of Respondents: 86;

Total Annual Responses: 172;

Average Burden Per Response: 2 hours;

Total Annual Hours: 172;

SUPPLEMENTARY INFORMATION: The Office of Family Planning is requesting that OMB grant a 120 day approval for this information collection under procedures for emergency processing under 5 CFR 1320.13 by May 5, 2004.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 7 days of this notice directly to the OMB Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–NEW), New Executive Office Building, Room 10235, Washington, DC 20201.

Dated: April 21, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–9668 Filed 4–28–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0128]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of Currently Approved Collection;

Title of Information Collection: HHS Acquisition Regulations: HHSAR 352.270–9 and Section 353.223–70;

Form/OMB No.: OS–0990–0128;

Use: This clearance request addresses reporting and recordkeeping requirements for acquisitions involving care of laboratory animals (HHSAR Section 352.270–9) and safety and health (HHSAR Section 352.223–70).

Frequency: Reporting and on occasion;

Affected Public: State, local, or tribal governments, business or other for profit, non for profit institutions;

Annual Number of Respondents: 122;

Total Annual Responses: 122;

Average Burden Per Response: 18 hours;

Total Annual Hours: 1,102.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0128), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: April 19, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–9669 Filed 4–28–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Time and Date: 2 p.m.–3 p.m., e.s.t., May 13, 2004.

Place: The conference call will originate at the National Center on Birth Defects and Developmental Disabilities (NCBDDD), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Secretary is authorized by the Public Health Service Act, section 399G, (42 U.S.C. 280f, as added by Public Law 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters to be Discussed: The Task Force will convene via conference call to: (1) Discuss and approve the recent revisions made to the Recommendations on Diagnostic and Referral Criteria for Fetal Alcohol Syndrome, (2) develop new Task Force working groups, and (3) obtain updates on recent motions passed by the Task Force related to the IDEA (Individuals with Disabilities Education Act) reauthorization and an FAS education requirement for teachers.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 2 p.m., eastern standard time. To participate in the conference call, please dial 1–866–453–4348 and enter conference code 602246. You will then be automatically connected to the call.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., (E–86), Atlanta, Georgia 30333, telephone 404/498–3923, fax 404/498–3550.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: April 23, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9694 Filed 4–28–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Advisory Committee for Injury Prevention and Control, and its subcommittees, the Science and Program Review Subcommittee and the Subcommittee on Intimate Partner Violence and Sexual Assault Science and Program Review Subcommittee (SPRS).

Times and Dates: 6:30 p.m.–9 p.m., May 17, 2004; 8 a.m.–5:30 p.m., May 18, 2004; 8 a.m.–10 a.m., May 19, 2004.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, NE., Atlanta, Georgia 30303.

Status:

Open: 6:30 p.m.–7 p.m., May 17, 2004.
Closed: 7 p.m.–9 p.m., May 17, 2004.
Closed: 8 a.m.–5:30 p.m., May 18, 2004.
Open: 8 a.m.–10 a.m., May 19, 2004.

Purpose: The SPRS provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control (NCIPC), as well as second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The SPRS also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters To Be Discussed: The SPRS will be discussing the results of the NCIPC Initial Review Group's review and vote on grant applications submitted in response to 1 program announcement for Injury Control Research Centers and research grant applications submitted in response to 12 program announcements for individual research grant and cooperative agreement applications This portion of the meeting (7 p.m.–9 p.m., May 17, 2004, and 8 a.m.–5:30 p.m., May 18, 2004), will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Name: Subcommittee on Intimate Partner Violence and Sexual Assault (SIPVSA).

Time and Date: 9 a.m.–11:30 a.m., May 19, 2004.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, NE., Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available.

Purpose: To advise and make recommendations to the full advisory committee and the Director, NCIPC, regarding feasible goals for prevention and control of domestic and sexual violence. The SIPVSA will make recommendations regarding strategies, objectives, and priorities in programs, policies and research.

Matters To Be Discussed: The SIPVSA will review the NCIPC research agenda priorities and implementation related to intimate partner violence and sexual assault and discuss strategies for examining models for integration of intimate partner violence and sexual assault prevention into broader public health infrastructure and strategies.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1 p.m.–5:30 p.m., May 19, 2004; 8:30 a.m.–2:30 p.m., May 20, 2004.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, NE., Atlanta, Georgia 30303.

Status:

Closed: 1 p.m.–1:45 p.m., May 19, 2004.
Open: 1:45 p.m.–5:30 p.m., May 19, 2004.
Open: 8:30 a.m.–2:30 p.m., May 20, 2004.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters To Be Discussed: Prior to the full committee meeting, there will be a brief meeting conducted by conference call of the Working Group on Injury Control and

Infrastructure Enhancement, a group formed to report to the full committee identifying gaps and suggesting ways to enhance injury prevention efforts. The working group will focus on defining injury infrastructure and developing a simple mechanism to assess current efforts underway throughout the injury field to enhance that infrastructure. Starting at 1 p.m., May 19, through 1:45 p.m., the full committee will vote on the results of secondary review. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552(b)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub L. 92–463. Following the closed session, the meeting will open to the public for an update on Center activities from the Director, NCIPC; reports from the Subcommittees and Working Group; state infrastructure development; and discussion on how NCIPC can support the recommendations of CDC's Futures Initiative.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 23, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9693 Filed 4–28–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Application for the Pharmacology Research Associate Program

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information colleciton listed below. This proposed information collection was previously published in the Federal Register on February 13, 2004, pages 7236–7237, and allow 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Extension of a currently approved collection. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological reserach for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households, Businesses or other for-profit.

The annual reporting burden is as follows:

Type and Number of Respondents	Estimated Number of Responses Per Respondent	Estimated Total Responses	Average Burden Hours per Responses	Estimated Total Annual Burden Hours Requested
Applicants 50	1	50	2.00	100
Referees 150	1	150	0.167	25

Total Number of Respondents: 200.

Total Number of Responses: 200.

Total Hours: 125.

The annualized cost to respondents is estimated at:

Applicants: $5,500.00

Referees: $1,250.00

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate 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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estiamted public burden and associated response time, should be directed to the: Office of Manageament and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Sally Lee, NIGMS, NIH, Natcher Building, Room 2AN–18H, 45 Center Drive, MSC 6200, Bethesda, MD 20892–6200, or call non-toll-free number 301–594–2755 or e-mail your request, including your address to *LeeS@nigms.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: April 21, 2004.

Sally Lee,

Deputy Executive Officer, National Institute of General Medical Sciences.

[FR Doc. 04–9683 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

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.

Formylpeptide Receptor (FPR) as a Target for Anti-Malignant Glioma Therapy

Ji Ming Wang et al. (NCI).

U.S. Provisional Application filed 25 Mar 2004 (DHHS Reference No. E–069–2004/0–US–01).

Licensing Contact: Jesse S. Kindra; 301–435–5559; *kindraj@mail.nih.gov.*

The present invention identifies formylpeptide receptor (FPR) as a target for therapeutic intervention against malignant gliomas. More specifically, the invention describes a method for inhibiting a FPR-mediated activity of a glioma cell expressing FPR, comprising contacting the cell with an effective amount of an agent that inhibits expression and/or activity of the FPR. Several classes of inhibitors of FPR expression and/or activity are shown to inhibit glioma cells, in particular, small interfering RNAs (siRNAs) and small molecule antagonists of FPR.

In addition to disclosing inhibitory agents for carrying out this method, the invention also discloses diagnostic methods for identifying highly malignant glioma cells and a method for identifying an agent that inhibits an FPR-mediated activity of a glioma cell.

Construction of a Recombinant Mammalian Expression System for the Production of Human TGF-beta 1 and Members of TGF-beta Superfamily Cytokines

Zhongcheng Zou and Peter Sun (NIAID).

U.S. Provisional Patent Application No. 60/534,379 filed 06 Jan 2004 (DHHS Reference No. E–048–2004/0–US–01).

Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov.*

Transforming growth factor-beta 1 ("TGF-beta 1") is an anti-inflammatory cytokine and is widely used in immunological research. Various recombinant expression systems produce TGF-beta 1, however, the yield of such expression systems remains low with the most effective systems producing from 1–5 mg/liter of cell culture with lengthy purification steps. As a result, the availability and price of the cytokine is unsatisfactory.

To address this problem, this invention provides a novel mammalian recombinant TGF-beta expression system which produces TGF-beta 1 at approximately 30 mg/liter of cell culture, which is approximately 10 times better than the yield provided by existing recombinant TGF-beta 1 expression systems. Owing to the large superfamily of cytokines to which TGF-beta belongs, this expression system can be potentially applied to other members of the TGF-beta superfamily.

Immunogenic Peptides for the Treatment of Prostate and Breast Cancer

Jay Berzofsky, Sang-kon Oh, and Ira Pastan (NCI).

U.S. Provisional Patent Application 60/476,467 filed 05 Jun 2003 (DHHS Reference No. E–116–2003/0–US–01).

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

This invention relates to antigenic sequences of the T cell receptor gamma alternate reading frame protein (TARP). TARP is expressed in breast cancer cells and prostate cancer cells. The patent application discloses immunogenic TARP polypeptides that generate an immune response to breast or prostate cancer cells that express TARP.

These include sequences modified to make them more immunogenic. The application also discloses specific TARP nucleic acid sequences and host cells transfected with these nucleic acids. This invention may be useful as a therapeutic to treat breast or prostate cancer.

Retroviral Packaging Cell Lines Based on Gibbon Ape Leukemia Virus

A. Dusty Miller (EM), Jose V. Garcia-Martinez (EM), Maribeth V. Eiden (NIMH), Carolyn A. Wilson (NIMH).

U.S. Patent 5,470,726 issued 28 Nov 1995 (DHHS Reference No. E–201–1991/0-US–02).

Licensing Contact: Pradeep Ghosh; 301/435–5282; *ghoshpr@mail.nih.gov.*

Gene therapy and gene transfer have recently been recognized as effective therapeutic tools to combat diseases. Accordingly, market demands for vectors and carriers to facilitate such interventions have surged in recent years. Retroviral vectors provide an efficient and safe means of gene transfer to eukaryotic cells. The present invention relates to genetic engineering involving retrovirus packaging cells that produce retroviral vectors. Specifically, the invention involves the expression plasmids encoding the envelop glycoproteins of a family of primate type C retrovirus, namely, the Gibbon Ape leukemia virus (GALV). Recombinant vectors derived from murine leukemia virus (MLV) have been widely used to introduce genes in human gene therapy clinical trials. A key determinant for their use in clinical gene therapy is the availability of packaging cell lines capable of producing large amounts of virus with identical titers. The present invention describes the packaging cell lines that produce MLV-based gene transfer vectors with the envelope from gibbon ape leukemia virus. Retroviral vectors produced are of high titer and have an expanded host range providing a means for gene transfer to a wide range of animal species. The gene transfer vectors produced are non-infectious and there was no evidence of production of helper virus, making these vectors safe. These cell lines are critical for producing large amounts of standardized vector necessary for efficient for in vivo and ex vivo gene transfer. Therefore, this invention has a significant commercial application as a tool in the development of diagnostic and therapeutic interventions related to gene transfer and gene therapy.

Dated: April 24, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–9684 Filed 4–28–04; 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.

Carbohydrate-Encapsulated Quantum Dots for Cell-Specific Biological Imaging

Joseph Barchi, Sergei Svarovsky (NCI).
U.S. Provisional Application filed 22 Mar 2004 (DHHS Reference No. E–133–2004/0–US–01).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Available for licensing is intellectual property covering carbohydrate-encapsulated quantum dots (QD) for use in medical imaging and methods of making the same. Certain carbohydrates, especially those included on tumor glycoproteins are known to have affinity for certain cell types. One notable glycan used in the present invention is the Thomsen-Freidenreich disaccharide (Ga1β1–3Ga1NAα–O–Ser/Thr) that is readily detectable in 90% of all primary human carcinomas and their metastases. These glycans can be exploited for medical imaging. Quantum Dots (QDs) are metallic (CdSe or CdTe) nanoparticles with detectable luminescent properties. Conjugating luminescent QDs with target specific glycans permits efficient imaging of the tissue to which the glycans bind with high affinity. Accurate imaging of diseased cells (*e.g.*, primary and metastatic tumors) is of primary importance in disease management. The inventors describe the only stable synthesis of glycan encapsulated QDs. In one embodiment, the synthesis involves the preparation of hybrid QDs containing a glycan and a luminescence-enhancing passivating agent in various ratios. Second generation QDs contain the glycan ligands and polyethylene glycols (PEG) of varying chain lengths. The PEG modifications produced QDs that maintained high luminescence while reducing non-specific cell binding.

MVL, an Antiviral Protein From a Cyanobacterium

Carole A. Bewley (NIDDK).
DHHS Reference No. E–068–2004/0–US–01 filed 08 Mar 2004.
Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

The invention describes the discovery of the carbohydrate binding protein (lectin), MVL, that binds specifically to oligosaccharides comprising the tetrasaccharide, Manα(1→6)(Manβ(1→4)G1cNAcβ(1→4)G1cNAc, with very high (nanomolar) affinity.

In particular, this invention shows that the binding of MVL to the carbohydrate residues of the glycoprotein gp120 can block HIV fusion into human cells and thus inhibit HIV infection. As a consequence, subject invention may be used in the development of therapeutics for the treatment of retroviral infections, such as AIDS. In addition, MVL described in this invention may also have particular value when used in combination treatments with other antiviral therapies directed at other viral targets, such as protease and reverse transcriptase.

Multiplex Real-Time PCR

Enrique Zudaire Ubani, Frank Cuttitta (NCI).
U.S. Patent Application No. 10/658,602 filed 08 Sep 2003 (DHHS Reference No. E–215–2003/0–US–01).
Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov*.

This invention is in the field of multiplex real-time polymerase chain reaction (PCR). In particular, the invention pertains to the quantification of multiple amplicons in a single polymerase chain reaction based on the different melting temperatures of amplicons. A utility U.S. Patent Application No. 10/658,602 was filed on September 8, 2003.

PCR is a primer-directed *in vitro* reaction for the enzymatic amplification of a fragment of DNA, involving repetitive cycles of DNA template denaturation, primer annealing to the DNA template, and primer extension. The result is an exponential accumulation of a specific DNA fragment or amplicon from an initial nominal amount of sample DNA templates. Multiplex PCR offers a more efficient approach to PCR, whereby multiple pairs of primers are used to simultaneously amplify multiple amplicons in a single PCR reaction. The simultaneous amplification of various amplicons decreases both the cost and turn-around time of PCR analysis, minimizes experimental variations and the risk of cross-contamination, and increases the reliability of end results. Multiplex PCR has gained popularity in many areas of DNA testing, including prognosis, diagnostic, gene deletion analysis, mutation and polymorphism analysis, genotyping and DNA array analysis, RNA detection, farmacogenomics and identification of microorganisms.

Real-time PCR has been developed to overcome limitations in quantifying amplicons during an ongoing PCR reaction, since traditional PCR and multiplex PCR are often limited to a qualitative analysis of end-product amplicons. Real-time PCR is based on the principles that emission of fluorescence from dyes directly or indirectly associated with the formation of newly synthesized amplicons or the annealing of primers with DNA templates can be detected and is proportional to the amount of amplicons in each PCR cycle. The resulting emission curve can then be used to calculate the initial copy number of a nucleic acid template at the beginning of the PCR reaction. Real-time PCR eliminates the need for post PCR steps and is highly recognized for its high sensitivity, precision and reproducibility. This invention is directed to methods for real-time monitoring and quantification of multiple amplicons in a single multiplex real-time PCR reaction based on the use of a double stranded DNA dye and the melting temperature discrepancy among the amplicons.

Methods and Compositions for the Inhibition of HIV–1 Replication

Sharon M. Wahl, Nancy Vazquez-Maldonado, Teresa Greenwell-Wild (NIDCR).
U.S. Provisional Application No. 60/516,794 filed 04 Nov 2003 (DHHS Reference No. E–114–2003/0–US–01).
Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This invention relates to methods and compositions for the attenuation of HIV–1 replication in human cells, and especially in human macrophages by targeting a host cell protein. HIV–1 infected macrophages typically resist cell death, support viral replication, and facilitate HIV–1 transmission. We found that the gene encoding cyclin-dependent kinase inhibitor 1A (CDKN1A) is consistently expressed following virus binding, and re-expressed at the peak of HIV–1 replication. The protein encoded by this gene, also known as p21, is associated with cell cycle regulation, anti-apoptotic response and cell differentiation. Increased levels of p21 may enhance survival and long-term persistence of HIV–1 infected macrophages. Treatment of cultured infected cells with antisense p21 oligonucleotides or p21 short interfering RNA (p21 siRNA) significantly reduced replication of HIV–1. A similar effect was observed when infected cells were exposed to the synthetic triterpenoid CDDO, a potent multifunctional agent that influences differentiation and has anti-inflammatory and anti-proliferative properties, including inhibition of p21. Neither p21 oligonucleotides nor CDDO were toxic to the cultured macrophages. Thus, p21 inhibitors could be safe and effective anti-HIV therapeutic candidates to be used in conjunction with current anti-retroviral therapy.

Cannula for Pressure Mediated Drug Delivery

Stephen Wiener, Robert Hoyt, John Deleonardis, Randal Clevenger, Robert Lutz, Brian Safer (NHLBI).

PCT Application No. PCT/US99/11277 filed 21 May 1999, which published as WO 99/59666 on 25 Nov 1999 (DHHS Reference No. E–196–1998/2–PCT–01); U.S., Australian, Japanese, and European rights pending.

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Available for licensing are methods and devices for selectively delivering therapeutic substances to specific histological or microanatomical areas of organs (*e.g.*, introduction of the therapeutic substance into a hollow organ space such as the hepatobiliary duct or the gallbladder lumen) at a controlled pressure, volume and/or rate which allows the substance to reach a predetermined cellular layer. The volume or flow rate of the substance can be controlled so that the intralumenal pressure reaches a predetermined threshold beyond which subsequent subepithehal delivery of the substance occurs. Alternatively, a lower pressure is selected that does not exceed the threshold level, so that delivery occurs substantially to the epithelial layer. Such site-specific delivery of therapeutic agents permits localized delivery in concentrations that may otherwise produce systemic toxicity. Occlusion of venous or lymphatic drainage from the organ can also help prevent systemic administration of therapeutic substances, and increases selective delivery to superficial epithelial cellular layers. Delivery of genetic vectors can also be delivered to target cells. The access device comprises a cannula with a wall piercing tracar within the lumen. Two axially spaced inflatable balloons engage the wall securing the cannula and sealing the puncture site. A catheter equipped with an occlusion balloon is guided through the cannula to the location where the therapeutic substance is to be delivered.

Dated: April 22, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–9685 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Review Group, Subcommittee G—Education.

Date: June 16–18, 2004

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites Alexandria, 801 North Saint Asaph Street, Alexandria, VA 22314.

Contact Person: Ilda M. Mckenna, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8111, Bethesda, MD 20892, (301) 496–7481, *mckennai@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9682 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Manpower & Training.

Date: June 14–15, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology

Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9730 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Institutional National Research Service Awards (T32s).

Date: May 21, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892; 301–435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9677 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Clinical Research Curriculum Awards (K30s).

Date: June 9–11, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, DM 20852.

Contact Person: Chitra Krishnamurti, PhD, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301–435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9678 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Intial Review Group Clinical Trials Review Committee.

Date: June 28, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Valerie L. Prenger, PhD, MPH, Scientific Review Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HSS)

Dated: April 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9679 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Competing Continuation of SBIR/STTR Phase II Awards—Meeting 4.

Date: May 19, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eugene R. Baizman, PhD, Scientific Review Administrator, DHHS/NIAID/DEA/SRP, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9675 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: May 26–27, 2004.

Closed: May 26, 2004, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: May 27, 2004, 9 a.m. to 2 p.m.

Agenda: Program reports and presentations; Business of the Council.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Contact Person: Karen P. Peterson, PhD., Executive Secretary, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9680 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performances, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA, NIAAA Board of Scientific Counselors.

Date: June 7–9, 2004.

Closed: June 7, 2004, 7 p.m. to 10 p.m.

Agenda: To review and evaluate board of Scientific Counselors Administrative Procedures.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 45–F1/F2, Bethesda, MD 20892.

Open: June 8, 2004, 7:45 a.m. ti 9 a.m.

Agenda: Overview of Intramural Program.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 45–F1/F2, Bethesda, MD 20892.

Closed: June 8, 2004, 8 a.m. to 6 p.m.

Agenda: To review and evaluate the Laboratories of Physiologic Studies (LCS), and Epidemiology and Biometry (LEB).

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 45–F1/F2, Bethesda, MD 20892.

Closed: June 8, 2004, 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate the Laboratory of Neurogenetics.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 45–F1/F2, Bethesda, MD 20892.

Contact Person: Brenda L. Sandler, Chief, Administrative Branch, NIAAA, 5635 Fishers Lane, MSC 9304, Bethesda, MD 20892–9304, 301–402–9386, *sandler@niaaa.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93,891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9681 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, April 22, 2004, 1 p.m. to April 22, 2004, 2 p.m., National Institutes of Health, NIAAA, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 which was published in the **Federal Register** on March 26, 2004, Vol. 69, 59, 15890.

The meeting will be held on May 6, 2004, instead of April 22, 2004. The location and time are the same. Jeffrey Toward, Ph.D., is the Scientific Review Administrator. The meeting is closed to the public.

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9728 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 HH (19)—Review of U18 Application(s).

Date: May 12, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 HH (16)—Review of U18 Application(s).

Date: May 12, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 HH (22)—Review of U18 Application(s).

Date: May 17, 2004.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9729 Filed 4–28–04; 8.45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Research Review Subcommittee, June 2, 2004, 8 a.m. to June 3, 2004, 4 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on March 11, 2004, Vol. 69, 48, 11642.

The meeting will be held on June 3–4, 2004 instead of June 2–3, 2004. It will start at 8 a.m. at the Hyatt Regency Bethesda, One Metro Center, Bethesda, MD, at the Bethesda Red Line Metro Stop. Sathasiva Kandasamy, Ph.D., SRA. The meeting is closed to the public.

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9731 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; "Science and Ethics for Young People: The Ethical Inclusion of Animals in Drug Abuse Research".

Date: May 26, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1437.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9732 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, May 25, 2004, 9 a.m. to May 25, 2004, 4 p.m., Double Tree Rockville, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on March 30, 2004, Vol. 69, Num. 61.

The location of the meeting was changed to the Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. The date and time remain the same. The meeting is closed to the public.

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9733 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Challenge Grants: Biodefense and SARS Product Development.

Date: May 24–25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3138, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9734 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Publication Grants Review.

Date: May 21, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: April 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9735 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 1, 2004, 1:30 p.m. to April 1, 2004, 2:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on March 15, 2004, 69 FR 12171–12173.

The meeting will be held April 27, 2004, from 2 p.m. to 3 p.m. The meeting

location remains the same. The meeting is closed to the public.

Dated: April 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9674 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunotoxins.

Date: May 4, 2004.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892. (301) 435–1719; *litwackm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NHLBI Competitive Supplements for Human Embryonic Stem Cell Research.

Date: May 25, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034; #ravindm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9676 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences; The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) Expert Panel Report on the Developmental and Reproductive Toxicity of Fluoxetine: Notice of Availability and Request for Public Comments

SUMMARY: Notice is hereby given of the availability on April 19, 2004, of the Expert Panel Report on the Developmental and Reproductive Toxicity of Fluoxetine. This report includes the summaries and conclusions of the expert panel's evaluation of the scientific data for potential reproductive and/or developmental hazards associated with exposure to fluoxetine. The CERHR held this expert panel meeting March 3–5, 2004. CERHR is seeking public comment on this report and additional information about recent, relevant toxicology or human exposure studies.

Availability of Reports

This expert panel report will be available by April 19, 2004 on the CERHR Web site (*http://cerhr.niehs.nih.gov*) and in printed copy or compact disc by contacting the CERHR [P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: (919) 541–3455; fax: (919) 316–4511; or e-mail: *shelby@niehs.nih.gov*].

Request for Public Comments

The CERHR invites public comments on this expert panel report and input regarding any recent, relevant toxicology or human exposure studies. The CERHR requests that all comments and other information be submitted to the CERHR at the address above by June 17, 2004.

All public comments received by the date above will be reviewed and included in the final NTP–CERHR monograph on fluoxetine to be prepared by NTP staff. The NTP–CERHR monograph will include the NTP brief, expert panel report, and all public comments received on the report. The brief will provide the NTP's interpretation of the potential for adverse reproductive and/or developmental effects to humans from exposure to fluoxetine. The NTP–CERHR monograph will be sent to appropriate federal agencies and will be available to the public and the scientific community on the CERHR web site, in hardcopy, or on compact disk.

Background

Fluoxetine hydrochloride (Prozac®; Sarafem™), an antidepressant, is a widely prescribed drug in the United States. The CERHR selected fluoxetine for evaluation because of (1) sufficient reproductive and developmental studies, (2) sufficient human exposure information, (3) changing prescription patterns, and (4) public concern about potential reproductive and/or developmental hazards associated with exposure. Fluoxetine hydrochloride, under the name Sarafem™), is prescribed to treat premenstrual dysphoric disorder (PMDD), potentially increasing the number of exposures for women of childbearing age. Furthermore, the Food and Drug Administration recently approved Prozac®; for use in 7–17 year-olds thereby increasing exposures of children.

A 12-member expert panel composed of scientists from the federal government, universities, and private companies conducted an evaluation of the reproductive and developmental toxicities of fluoxetine hydrochloride (**Federal Register** Vol. 68, No. 216, pages 63122—63123, November 2003). Public deliberations by the panel took place March 3–5, 2004, at the Holiday Inn Old Town Select in Alexandria, Virginia. Following the March meeting, the draft expert panel report was revised to incorporate the panel's conclusions and subsequently reviewed by Fluoxetine Expert Panel, NTP scientists, and CERHR personnel.

Additional Information About CERHR

The NTP and the NIEHS established the NTP CERHR in June 1998 (**Federal Register** Vol. 63, No. 239, page 68782, December 1998). The purpose of the CERHR is to provide scientifically based, uniform assessments of the potential for adverse effects on reproduction and development caused

by agents to which humans may be exposed. Further information on the CERHR's chemical review process, including how to nominate chemicals for evaluation and scientists for the expert registry, can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting the CERHR directly (see address above). The CERHR also serves as a resource for information on various environmental exposures and their potential to affect pregnancy and child development. The web site has information about common concerns related to fertility, pregnancy and the health of unborn children and links to other resources for information about public health.

Dated: April 21, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–9736 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for Strategic Prevention Framework State Incentive Grants (SPF SIG) (SP 04–002)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Request for Applications for Strategic Prevention Framework State Incentive Grants (SPF SIG) (SP 04–002).

Authority: Section 516 of the Public Health Service Act.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of grant funds for Strategic Prevention Framework State Incentive Grants (SPF SIGs). SPF SIG program is one of SAMHSA's Infrastructure Grant programs. SAMHSA's Infrastructure Grant programs support an array of activities to help grantees build a solid foundation for delivering and sustaining effective substance abuse and/or mental health services. The SPF SIGs, in particular, will provide funding to States to implement SAMHSA's Strategic Prevention Framework in order to:

- Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking,
- Reduce substance abuse-related problems in communities, and
- Build prevention capacity and infrastructure at the State and community levels.

The Strategic Prevention Framework is built on a community-based risk and protective factors approach to prevention and a series of guiding principles that can be operationalized at the Federal, State and community levels. Although the direct recipients of SPF SIG funds will be the States, SAMHSA envisions the SPF SIGs being implemented through partnerships between the States and communities. The SPF SIG grantees may retain 15 percent of the total grant award to provide leadership and coordination of the SPF project in the State, hire SPF SIG project staff, and implement the following State-level activities:

- Conduct a statewide needs assessment.
- Establish and maintain a State Epidemiological Workgroup

Note: SAMHSA expects that an average of $200,000 per year will be needed to support the needs assessment and State Epidemiological Workgroup activities.

- Develop a statewide Strategic Plan
- Conduct on-going monitoring and oversight of the SPF SIG project
- Conduct a State-level evaluation of the SPF SIG project
- Provide training and technical assistance to support the SPF SIG project

States must allocate a minimum of 85 percent of the total grant award to community-level organizations, or through sub State mechanisms to community-level organizations.

DATES: Applications are due on July 2, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues, contact: Mike Lowther, SAMHSA/CSAP, 5600 Fishers Lane, Rockwall II, Suite 930, Rockville, MD 20857, Phone: (301) 443–0369, E-Mail: *mlowther@samhsa.gov*, or Dave Robbins, SAMHSA/CSAP, 5600 Fishers Lane, Rockwall II, Suite 930, Rockville, MD 20857, Phone: (301) 443–0369, E-Mail: *drobbins@samhsa.gov*.

For questions on grants management issues, contact: Edna Frazier, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, Phone: (301) 443–443–6816, E-mail: *efrazier@samhsa.gov*.

SUPPLEMENTARY INFORMATION: Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243.

KEY DATES

Application deadline	Application deadline: July 2, 2004
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.

Table of Contents

I. Funding Opportunity Description

1. Introduction

As authorized under Section 516 of the Public Health Service Act, the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of

grant funds for Strategic Prevention Framework State Incentive Grants (SPF SIGs).

The SPF SIG program is one of SAMHSA's Infrastructure Grant programs. SAMHSA's Infrastructure Grant programs support an array of activities to help grantees build a solid foundation for delivering and sustaining effective substance abuse and/or mental health services. The SPF SIGs, in particular, will provide funding to States to implement SAMHSA's Strategic Prevention Framework in order to:

- prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking,
- reduce substance abuse-related problems in communities, and
- build prevention capacity and infrastructure at the State and community levels.

The Strategic Prevention Framework is built on a community-based risk and protective factors approach to prevention and a series of guiding principles that can be operationalized at the Federal, State and community levels. Although the direct recipients of SPF SIG funds will be the States, SAMHSA envisions the SPF SIGs being implemented through partnerships between the States and communities.

2. Expectations

The Strategic Prevention Framework provides an effective prevention process, a direction and a common set of goals, expectations and accountabilities to be adopted and integrated at all levels. Through the SPF SIGs, States will be funded for up to five years to implement the Strategic Prevention Framework in partnership with community-level organizations in their States. The SPF SIG grantees may retain 15 percent of the total grant award to provide leadership and coordination of the SPF project in the State, hire SPF SIG project staff, and implement the following State-level activities:

- Conduct a statewide needs assessment
- Establish and maintain a State Epidemiological Workgroup

Note: Note: SAMHSA expects that an average of $200,000 per year will be needed to support the needs assessment and State Epidemiological Workgroup activities.

- Develop a statewide Strategic Plan
- Conduct on-going monitoring and oversight of the SPF SIG project
- Conduct a State-level evaluation of the SPF SIG project
- Provide training and technical assistance to support the SPF SIG project

States must allocate a minimum of 85 percent of the total grant award to community-level organizations, or through sub State mechanisms to community-level organizations.

2.1 Guiding Principles for the Strategic Prevention Framework

The Strategic Prevention Framework is grounded in the public health approach and based on six key principles. SPF SIG grantees are required to base their SPF SIG projects on these six principles:

1. *Prevention is an ordered set of steps along a continuum to promote individual, family, and community health, prevent mental and behavioral disorders, support resilience and recovery, and prevent relapse.* Prevention activities range from deterring diseases and behaviors that contribute to them, to delaying the onset of disease and mitigating the severity of symptoms, to reducing the related problems in communities. This concept is based on the Institute of Medicine model that recognizes the importance of a whole spectrum of interventions.

2. *Prevention is prevention is prevention.* That is, the common components of effective prevention for the individual, family or community within a public health model are the same—whether the focus is on preventing or reducing the effects of cancer, cardiovascular disease, diabetes, substance abuse or mental illness.

3. *Common risk and protective factors exist for many substance abuse and mental health problems. Good prevention focuses on these common risk factors that can be altered.* For example, family conflict, low school readiness, and poor social skills increase the risk for conduct disorders and depression, which in turn increase the risk for adolescent substance abuse, delinquency, and violence. Protective factors such as strong family bonds, social skills, opportunities for school success, and involvement in community activities can foster resilience and mitigate the influence of risk factors. Risk and protective factors exist in the individual, the family, the community, and the broader environment.

4. *Resilience is built by developing assets in individuals, families, and communities through evidenced-based health promotion and prevention strategies.* For example, youth who have relationships with caring adults, good schools, and safe communities develop optimism, good problem-solving skills, and other assets that enable them to rebound from adversity and go on with life with a sense of mastery, competence, and hope.

5. *Systems of prevention services work better than service silos.* Working together, researchers and communities have produced a number of highly effective prevention strategies and programs. Implementing these strategies within a broader system of services increases the likelihood of successful, sustained prevention activities. Collaborative partnerships enable communities to leverage scarce resources and make prevention everybody's business. National prevention efforts are more likely to succeed if partnerships with States, communities, and practitioners focus on building capacity to plan, implement, monitor, evaluate, and sustain effective prevention.

6. *Baseline data, common assessment tools, and outcomes shared across service systems can promote accountability and effectiveness of prevention efforts.* A Strategic Prevention Framework can facilitate Federal agencies, States, and communities to identify common needs and risk factors, adopt assessment tools to measure and track results, and target outcomes to be achieved. A data-driven strategic approach, adopted across service systems at the Federal, State, community, and service delivery levels, maximizes the chances for future success and achieving positive outcomes.

2.2 Strategic Prevention Framework Process

Moving SAMHSA's Strategic Prevention Framework from vision to practice is a strategic process that State and community stakeholders must undertake in partnership. Through the SPF SIG, States will provide the requisite leadership, technical support and monitoring to ensure that identified communities are successful in implementing the five steps of the framework listed below. These steps are required, and all targeted communities must implement all five steps. States and communities are encouraged to build on existing infrastructure/activity, where appropriate. States are expected to use the SPF framework to guide all prevention activity through-out the State, whether funded though the SPF SIG grant or through other sources.

(1) *Profile population needs, resources, and readiness to address the problems and gaps in service delivery.*

State Role: SPF SIG grantees must conduct a statewide needs assessment, through collection and analysis of

epidemiological data, that includes the following:

- Assessment of the magnitude of substance abuse and related mental health disorders in the State,
- Assessment of risk and protective factors associated with substance abuse and related mental health disorders in the state,
- Assessment of community assets and resources,
- Identification of gaps in services and capacity,
- Assessment of readiness to act,
- Identification of priorities based on the epidemiological analyses, including the identification of target communities to implement the Strategic Prevention Framework, and
- Specification of baseline data against which progress and outcomes of the Strategic Prevention Framework can be measured.

In order to complete the statewide assessment, SPF SIG grantees will be required to form and manage a State Epidemiological Workgroup (or work with an existing Epidemiological Workgroup). If the State is already engaged in needs assessment efforts, it should use the Epidemiological Workgroup to enhance and supplement the current process and its findings. SAMHSA expects that these data collection efforts will support on-going monitoring and evaluation throughout the five-year project period, as described in Step 5, below.

Community Role: Communities must accurately assess their substance abuse-related problems using epidemiological data provided by the State as well as other local data. The epidemiological data must identify the magnitude of the problem to be addressed, where the problem is greatest, and risk and protective factors associated with the problem. Communities must also assess community assets and resources, gaps in services and capacity and readiness to act.

(2) *Mobilize and/or build capacity to address needs.*

State Role: The SPF SIG grantees must engage stakeholders across the States, as a complement to parallel engagement activities occurring within the target communities that are selected for implementation activities.

Community Role: Engagement of key stakeholders at the State and community levels is critical to plan and implement successful prevention activities that will be sustained over time. Key tasks may include, but are not limited to, convening leaders and stakeholders; building coalitions; training community stakeholders, coalitions, and service providers; organizing agency networks; leveraging resources; and engaging stakeholders to help sustain the activities.

(3) *Develop a Comprehensive Strategic Plan.*

State Role: Using data from the statewide needs assessment, SPF SIG grantees must develop a State strategic plan that:

—Identifies the priorities that will be targeted in the State's Strategic Prevention Framework,
—Articulates a vision for prevention activities to address critical needs,
—Describes necessary infrastructure development and/or evidence-based policies, programs and practices (or a process for selection) to be implemented within the broader service system and specifies timelines for implementation,
—Identifies/coordinates/allocates resources and sources of funding for the plan,
—Identifies appropriate funding mechanism(s) to allocate resources to targeted communities,
—Identifies any training required,
—Includes key policies and relationships among stakeholders,
—Involves public and private service systems in creating a seamless continuum of planning and services,
—Includes plans for sustaining the infrastructure and services that are implemented,
—Identifies key milestones and outcomes against which to gauge performance, thereby allowing for system improvement and accountability of all parties involved, and
—Includes plans for making adjustments, based on on-going needs assessment activities.

Community Role: Communities must develop a strategic plan that articulates not only a vision for the prevention activities, but also strategies for organizing and implementing prevention efforts. The strategic plan must be based on documented needs, build on identified resources/strengths, set measurable objectives and include the performance measures and baseline data against which progress will be monitored. Plans must be adjusted as the result of ongoing needs assessment and monitoring activities. The issue of sustainability should be a constant throughout each step of planning and implementation and should lead to the creation of a long-term strategy to sustain policies, programs and practices.

The strategic plans must be data-driven and focused on addressing the most critical needs in the State. The State Strategic Plan must be approved by the SAMHSA/CSAP Government Project Officer before implementation activities can begin.

(4) *Implement evidence-based prevention programs and infrastructure development activities.*

State Role: Once the State's Strategic Plan is approved by the SAMHSA/CSAP Government Project Officer, implementation may begin. SPF SIG grantees must provide the infrastructure and other necessary support to local stakeholders in selecting and implementing policies, programs, and practices proven to be effective in research settings and communities. States must ensure that community implementers make culturally competent adaptations without sacrificing the core elements of the program.

Community Role: Similarly, local stakeholders will use the findings of their needs assessments to guide selection and implementation of policies, programs and practices proven to be effective in research settings and communities. Community implementers must ensure that culturally competent adaptations are made without sacrificing the core elements of the program. SAMHSA especially encourages the selection and adaptation of programs contained in the National Registry of Effective Programs (NREP), though this is not a requirement of the SPF SIG. (See Appendix C for information about NREP.)

(5) *Monitor process, evaluate effectiveness, sustain effective programs/activities, and improve or replace those that fail.*

State Role: SPF SIG grantees will be accountable for the results of the SPF SIG grant projects. SPF SIG grantees are, therefore, expected to play a critical role in providing on-going monitoring and evaluation of all SPF SIG activities, as well as training and technical assistance regarding evaluation and performance measurement to local communities. Through these efforts, the SPF SIG grantees will assess program effectiveness, ensure service delivery quality, identify successes, encourage needed improvement, and promote sustainability of effective policies, programs, and practices. The SPF SIG grantees will be expected to provide performance data to SAMHSA on a regular basis, as described in Section I–2.5, Data and Performance Measurement, of this announcement. SPF SIG grantees must be prepared to adjust their implementation plans based on the results of monitoring/evaluation activities.

Community Role: Ongoing monitoring and evaluation are essential to

determine if the outcomes desired are achieved and to assess program effectiveness and service delivery quality. Communities must provide performance data to the SPF SIG States on a regular basis, so that the States can monitor, evaluate, sustain and improve the Strategic Prevention Framework activities in the State.

Although the first three steps of the Strategic Prevention Framework will continue at some level throughout the course of the project, SAMHSA expects that the SPF SIG grantees will be ready to begin implementing steps 4 and 5 by the end of the first year of the project.

2.3 Inclusion of Underage Drinking

Recent studies—including a major undertaking by the National Academy of Science—indicates a severe and persistent problem with the use of alcohol by children and youth under the age of 21. The Department of Health and Human Services, through SAMHSA/CSAP, is committed to bringing down the rates of underage drinking and is working toward a target of $30 million in FY 2004 funding for communities to address this problem. The SPF SIG grant offers an excellent vehicle for supporting the goals of this underage drinking initiative. State applicants must therefore include the prevention of underage alcohol consumption as part of their SPF SIG project and provide a comprehensive strategy that addresses this problem, along with other SPF SIG priorities. (This will mean addressing underage drinking and other substance abuse.) Underage drinking must be included in all five steps of the Strategic Prevention Framework implemented by each SPF SIG grantee.

2.4 Strategic Prevention Framework Advisory Council

In implementing the SPF SIG, States are required to form a Strategic Prevention Framework Advisory Council (SPF Advisory Council) that includes a representative(s) from each of the following:

(1) The Office of the Governor;

(2) A core group of drug and alcohol-related agencies identified by the State (including but not limited to public health, education, criminal justice, behavioral/mental health);

(3) A Demand Reduction Coordinator from the Drug Enforcement Administration who has responsibility for the State;

(4) The State agency identified by the applicant as the lead agency on underage drinking. (SAMHSA/CSAP encourages Governors to designate a lead agency for preventing underage drinking if one does not currently exist); and

(5) SAMHSA/CSAP.

Representatives from other State, community and non-profit organizations that work in substance abuse prevention and mental health promotion/early intervention are also encouraged to be part of the SPF Advisory Council.

The Chair of the SPF Advisory Council is to be appointed by the Governor.

The SPF Advisory Council should provide ongoing advice and guidance to the SPF SIG project and is encouraged to create workgroups to monitor progress and accomplish each of the required steps of the Strategic Prevention Framework.

2.5 Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to:

- develop strategic plans that specify what they will accomplish over a 3- to 5-year period;
- set performance targets annually related to their strategic plan; and
- report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these performance data to SAMHSA on a timely basis so that results are available to support budgetary decisions.

In collaboration with States and other stakeholders, SAMHSA has reviewed its discretionary and block grant programs, examining their ability to capture and assess performance data on treatment and prevention outcomes. The result has been the identification of seven key National Outcome domains.

- Four domains apply to both prevention and recovery and will be addressed by the SPF SIG: (1) Abstinence from illicit drug use and alcohol abuse, (2) increased employment/return to school, (3) prevented or decreased criminal justice involvement, and (4) increased stabilization of family and living conditions.
- Two of the three remaining domains—increased access to services and increased social supports and connectedness—relate directly to the prevention services process itself and will be addressed by the SPF SIG.
- The seventh domain (increased retention in treatment) is not relevant to prevention and will not be addressed by the SPF.

The SPF SIG grantees also will be required to collect and report data on two additional domains—Cost Effectiveness and Use of Evidence-Based Practices—as a result of the Office of Management and Budget (OMB) Program Assessment and Review Tool (PART) review of SAMHSA's block grants.

SPF SIG grantees must include performance measures in the National Outcome domains in the needs assessments and on-going monitoring and evaluation activities that will be conducted through the SPF SIGs. By using these same outcome domains and their measures over time to assess progress, States and SAMHSA can foster continuous program and policy improvement.

The performance measures in each of the domains relevant to the Strategic Prevention Framework are listed below and specific data elements to be used for each of the performance measures are provided in Appendix D of this announcement. SPF SIG States will be expected to collect and aggregate these data from the target communities for the SPF SIG. Comparable statewide data will be collected through the prevention portion of the States Substance Abuse Prevention and Treatment Block Grant (SAPTBG) allotment.

Applicants for the SPF SIG should describe their current ability to collect and report data on these measures in their applications, but should understand that the specific requirements for doing so may change. In particular, data elements for some of the performance measures are currently under development. Applicants for the SPF SIG must propose an approach to collecting and reporting data on the developmental performance measures in their applications. A meeting of the SPF SIG grantees and State officials working on the prevention portion of the SAPTBG will be convened 3 to 6 months after award to finalize an approach to collecting and reporting these measures. Ultimately, OMB approval will be required. SAMHSA/CSAP will provide the final set of measures, data collection tools and approved methodology to the SPF SIG grantees after OMB approval has been obtained.

Desired outcome/domain	Performance measure
Abstinence from Drug	30-day substance use (non-use/reduction in use).
Use/Alcohol Abuse	Availability of alcohol, tobacco and other drugs.
	Perception of drug use as harmful.
	Attitude toward use (Perception of drug use as wrong).
Increased/Retained Employment or Return to/Stay in School	School attendance, ATOD-related suspensions/expulsions, Drug-related workplace injuries.
Decreased Criminal Justice Involvement	Drug-related crime.
Increased Stability in Family and Living Conditions	Parent participation in prevention activities.
Increased Access to Services (Service Capacity)	Number of persons served by age, gender, race, and ethnicity.
Increased Social Supports/Social Connectedness	Under development.

OMB required outcome/domain	Performance measure
Cost Effectiveness	Increase services provided within cost bands.
Use of Evidence-Based Practices	Total number of evidence-based programs and strategies funded by SPF SIG.

In addition to the required performance data, SPF SIG States will be required to identify and report the amount of funding focused on underage drinking for each year of the project. Finally, grantees may choose to collect additional data to monitor progress in addressing state-specific needs identified in the statewide needs assessment. Applicants should specify and justify any additional measures they plan to collect in their applications.

2.6 Evaluation

Grantees must conduct on-going monitoring and evaluation of their projects to determine if the outcomes desired are achieved and to assess program effectiveness and service delivery quality, encourage needed improvement, and promote sustainability of effective programs. Grantees must be prepared to adjust their implementation plans based on the results of their monitoring/evaluation activities. The evaluation must include the required performance measures described above and must enable the State to track progress in achieving SPF SIG Project Goals. The evaluation must include both process and outcome components. Although control groups are not required, the State must identify potential sources of comparison data at the state and community level. The evaluation plan must be considered when preparing the project budget.

The process evaluation must address the implementation of the Strategic Prevention Framework:

- How closely did implementation match the plan?
- What types of deviation from the plan occurred?
- What led to the deviations?
- What impact did the deviations have on the intervention and evaluation?

The outcome evaluation must provide data and measurement to determine changes in the seven National Outcome domains described above. To the extent possible, the outcome evaluation should investigate the relationship between changes in the domains and the implementation of the Strategic Prevention Framework:

- What was the effect of the Strategic Prevention Framework project on service capacity and other system outcomes?
- Did the Strategic Prevention Framework project achieve the intended Project Goals?
- What program/contextual factors were associated with outcomes?
- What individual factors were associated with outcomes?
- How durable were the effects?

Following award, SPF SIG States will be required to submit revisions to their data collection and evaluation plans based on the results of needs assessment activities, the on-going work of the Epidemiological Workgroup, and development of the SPF SIG strategic plan.

In addition to conducting a project-specific evaluation, SPF SIG grantees must participate in a SPF SIG cross-site evaluation to be conducted by CSAP and the National Institute on Drug Abuse (NIDA). This cross-site evaluation will be designed to measure the impact of the SPF SIG program as a whole in terms of establishing and sustaining an infrastructure at the State and community-levels to allow data-based decision-making and improving client outcomes as well as environmental factors that affect substance abuse. SPF SIG grantees must explicitly state their willingness to participate in this cross-site evaluation in their applications, including their willingness to provide required forms, data and reports related to the cross-site evaluation.

2.7 Grantee Meetings

Grantees must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant and must include funding for this travel in the grant budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be up to 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

2.8 Technical Assistance From SAMHSA

Due to the unique nature of this grant program, SAMHSA recognizes that applicants may wish to entertain an array of program and administrative options. To respond, SAMHSA will make available both pre-application and post-award technical assistance. Examples of topics for which technical assistance may be provided include, but are not limited to:

- Conducting needs assessments,
- Forming and working with Epidemiological Workgroups, including establishment of initial data bases to support collection and analysis of epidemiological data,
- Identification and selection of evidence-based practices,
- Fiscal/cost accounting mechanisms that can track program expenditures,
- Management of information systems to track performance and outcomes,
- Development of quality improvement activities, including technical assistance and training to support implementation of evidence-based practices, and
- Outreach to entities unknown to the State.

II. Award Information

1. Award Amount

It is expected that approximately $45 million will be available to fund up to 20 awards in Fiscal Year (FY) 2004. Annual awards are expected to be $3.0 million or less per year in total costs (direct and indirect). Applicants may request a project period of up to five years.

Based on the President's budget request for FY 2005, SAMHSA expects to have additional funds available for a small number of new awards in 2005. The amount available for new awards in FY 2005 will be determined by the final appropriation. Because the number of new awards to be made is expected to be small, SAMHSA does not currently plan to republish the SPF SIG announcement for 2005. Instead, SAMHSA plans to make FY 2005 awards to applicants who submit applications under this grant announcement but do not receive funding in FY 2004. All States are strongly encouraged to apply for an SPF SIG grant in FY 2004.

Proposed budgets may be less than, but may not exceed, $3 million in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

Because the SPF SIG is intended to be implemented through a partnership between the State and community-level organizations, and because much of the Strategic Prevention Framework involves activity that must be implemented at the community level, State applicants for the SPF SIG may retain up to 15 percent of the total grant award for activities to be implemented at the State level. A minimum of 85 percent of the total grant award must be allocated to community-level organizations for activities to be implemented at the community level. Both State and community-level recipients of funds are expected to be involved in all five required steps of the Strategic Prevention Framework.

2. Funding Mechanism

Awards will be made as Cooperative Agreements.

Role of the State Awardee

The SPF SIG State awardee must comply with the terms of the SPF SIG Cooperative Agreement, including implementation of all required SPF SIG activities described in Section I–2, Expectations, in this grant announcement. The SPF SIG awardee must agree to provide SAMHSA with all required performance data, collaborate with SAMHSA/CSAP staff in all aspects of the SPF SIG Cooperative Agreement, and participate in the SIG Cross Site Evaluation (including submission of all required forms, data and reports).

Role of Federal Staff

The Government Project Officer (GPO) will serve as an active member of the State's SPF Advisory Council. Through participation on the Advisory Council, the GPO will provide guidance and technical assistance to help awardees achieve SPF SIG goals. The GPO also will participate on policy, steering, advisory or other workgroups; assure that SPF SIG projects are responsive to SAMHSA's mission and implement the SAMHSA Strategic Prevention Framework; monitor and review progress of SPF SIG projects; monitor development and collection of process and outcome data from SPF SIG grantees; ensure compliance with Government Performance and Results Act (GPRA) and Core Measures data requirements; ensure the SPF SIG's collaboration with the SPF SIG State Epidemiological Workgroup; and review and approve the State's Strategic Plan and relevant subrecipient funding mechanisms.

III. Eligibility Information

1. Eligible Applicants

This program is intended to help States enhance the prevention infrastructure and service delivery system throughout the State. Applicants for the SPG SIG must have the ability to leverage and coordinate all prevention-related sources of funding and other resources in order to achieve the goals of the Strategic Prevention Framework. Therefore, eligibility for the SPF SIG is limited to the immediate office of the Governor in those States and Territories that currently receive the SAPT Block Grant. Governors are strongly encouraged to designate administration and oversight of the SPF SIG to the agency in the State that manages the 20 percent prevention set-aside of the SAPT Block Grant.

2. Cost Sharing

Cost sharing is not required in this program, and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project. Reviewers may consider this information in evaluating the quality of the application.

3. Other

Applications must comply with the following requirements, or they will be screened out and will not be reviewed: use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address to Request Application Package

You may request a complete application kit by calling the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

You also may download the required documents from the SAMHSA Web site at *www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1. Applications that are not submitted on the PHS 5161–1 will be screened out and will not be reviewed.
- Request for Application (RFA)—Provides specific information about the availability of funds along with instructions for completing the grant application. This document is the RFA. The RFA will be available on the SAMHSA Web site (*http://www.samhsa.gov*) and on the Federal grants Web site (*http://www.grants.gov*). The RFA also will be published in the **Federal Register.**

You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

• *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [Note: Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

• *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

• *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

• *Budget Form*—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.

• *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through D. These sections in total may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through H. There are no page limits for these sections, except for Section G, Biographical Sketches/Job Descriptions.

• *Section E*—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• *Section F*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation.

• *Section G*—Biographical Sketches and Job Descriptions.

—Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

—Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

—Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Section H*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

• *Appendices 1 through 3*—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1 and 3. There are no page limitations for Appendix 2. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them if you do.

—*Appendix 1:* Letters of Support

—*Appendix 2:* Data Collection Instruments/Interview Protocols

—*Appendix 3:* Sample Consent Forms

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. You are also required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations Form SMA 170. This form will be posted on SAMHSA's Web site with the RFA and provided in the application kits available at SAMHSA's clearinghouse (NCADI).

• *Certifications*—Use the "Certifications" forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The 30-page limit for Appendices 1 and 3.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

- Pages should be typed single-spaced with one column per page.
- Pages should not have printing on both sides.
- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

Applicants must describe procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section H of the application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of the application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* describe how they will address the requirements for each of the following elements relating to confidentiality and participant protection.

1. Protect Clients and Staff From Potential Risks

- Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.
- Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.
- Identify plans to provide guidance and assistance in the event there are adverse effects to participants.
- Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

- Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.
- Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.
- Explain the reasons for *including or excluding* participants.
- Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

- Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.
- If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, etc.).
- State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. Data Collection

- Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.
- Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.
- Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

- Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.
- Describe:

—How you will use data collection instruments.
—Where data will be stored.
—Who will or will not have access to information.
—How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

- List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.
- State:

—Whether or not their participation is voluntary.
—Their right to leave the project at any time without problems.
—Possible risks from participation in the project.
—Plans to protect clients from these risks.

- Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain *written* informed consent.

- Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 3, "Sample Consent Forms", of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Applicants may have to comply with the Protection of Human Subjects Regulations (45 CFR part 46), depending on the evaluation design proposed in the application.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

Applications are due by close of business on July 2, 2004. Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html*.

• Check the list to determine whether your State participates in this program.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. SP 04–002.

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, SAMHSA's SPF SIG recipients must comply with the following funding restrictions:

• Grant funds must be used for purposes supported by the program.

• The SPF SIG grantees may retain up to 15% of the total grant award for implementation of State-level activities, while a minimum of 85% of the total grant award must be allocated to community-level organizations to support activities taking place at the community level.

• Grant funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project. Applications may request up to $75,000 for renovations and alterations of existing facilities.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include "SPF SIG/SP 04–002" in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the *quality* of your response to the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

• In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.

• You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct

section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.

• Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *http://www.samhsa.gov*. Click on "Grant Opportunities."

• The Supporting Documentation you provide in Sections E–H and Appendices 1–5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.

• The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Statement of Need (10 points)

• Document the need to implement the Strategic Prevention Framework in the State. Include information about the prevalence of substance abuse and related risk and protective factors within the State. Documentation of need may come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Survey on Drug Use and Health or from National Center for Health Statistics/ Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.

• Describe the need for an enhanced infrastructure to increase the capacity to implement, sustain, and improve effective substance abuse prevention services in the State. Describe what is currently known about service gaps, barriers, and other problems related to the need to implement the Strategic Prevention Framework.

• Describe how the Strategic Prevention Framework State Incentive Grant (SPF SIG) will help the State and communities to address substance abuse problems in the State. Include how the SPF will improve the State's process for collecting, analyzing and utilizing data to plan, implement and evaluate substance abuse prevention efforts.

• Describe key stakeholders and resources within the State that can help implement the Strategic Prevention Framework.

Section B: Proposed Approach (35 points)

• Clearly state the purpose of the proposed project, including specific goals and objectives for your State. Describe how implementation of the Strategic Prevention Framework will lead to achievement of those goals and objectives, and how this will increase system capacity to support effective substance abuse prevention.

• Describe the approach that will be used to implement the Strategic Prevention Framework. In this description, you should:

—Document that the project will build upon the six principles of the Strategic Prevention Framework;
—Describe how you will implement the five required steps of the Strategic Prevention Framework at the State level;
—Describe how you will implement a complementary/parallel 5-step process within the target communities that are selected for implementation activities;
—Describe roles that you expect states and communities to play in each of the five steps; and
—Describe how childhood and underage drinking will be included as an emphasis in each of the target communities selected for funding.

• Describe your plans to develop or expand Epidemiological Workgroups, and describe the State's plan to utilize the information generated by the Epidemiological Workgroups to drive funding decisions.

• Describe your plans for forming and mobilizing a new SPF Advisory Council or enhancing an existing advisory body to meet the requirements for the SPF Advisory Council described in Section I–2.4, SPF Advisory Council. Include a description of the SPF Advisory Council's membership, roles and functions, and frequency of meetings.

• Describe plans to implement culturally appropriate policies, programs and practices.

• Describe how you will encourage communities to use evidence-based programs, practices and policies.

• Describe the community partners and any other organizations that will participate in the project and their roles and responsibilities. Demonstrate their commitment to the project. Include letters of commitment/coordination/ support from these community organizations in Appendix 1 of the application. Identify any cash or in-kind contributions that will be made to the project.

• Describe how members of the target population were involved in the preparation of the application, and how they will be involved in the planning, implementation, and evaluation of the project.

• Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.

• Provide a plan to secure resources to sustain the proposed infrastructure enhancements when Federal funding ends.

Section C: Staff and Management Capacity, and Relevant Experience (25 points)

• Provide a realistic time line for the project management (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The time line should be part of the Project Narrative. It should not be placed in an appendix.]

• Discuss the capability and experience of the applicant organization and other partnering organizations with similar projects, including experience in implementing culturally appropriate/ competent prevention interventions.

• Provide a list of staff or position descriptions that will participate in the project, showing the role of each and their level of effort and qualifications. Include the Project Director, Epidemiological Workgroup Lead, Project Evaluator, and other key personnel.

• Describe the resources available for the proposed project (*e.g.*, facilities, equipment). Provide evidence that any direct services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.

Section D: Evaluation and Data (30 points)

• Describe the process and outcome evaluation, addressing the evaluation requirements specified in Section I–2.6, Evaluation, of this grant announcement. Include specific performance measures and target outcomes related to the goals and objectives identified for the SPF SIG project in Section B of the Project Narrative. Discuss how they will be used to track progress in achieving these goals and objectives over the course of the SPF SIG project.

• Document your ability to collect and report on the required performance measures as specified in Section I–2.5, Data and Performance Measurement, and Appendix D of this grant

announcement. Specify and justify any additional measures you plan to use for your grant project.

• Describe plans for data collection, management, analysis, interpretation and reporting.

—Describe the existing data collection system, its ability to capture required performance measures, and any necessary modifications.

—Describe planned approaches to surveying program participants or gathering archival data on an ongoing basis to map the program results to needs assessment and other data.

—Document your ability to access target populations for the purposes of gathering data.

—Include project-specific data collection instruments/interview protocols (*i.e.*, those not required by CSAP) in Appendix 2.

• Discuss the reliability and validity of evaluation methods and instruments in terms of the gender/age/culture of the target population.

• Describe your plan for tracking the data generated by your project over time, and utilizing these data in your ongoing project planning and development.

• Describe your approach to ensuring that adequate evaluation and data collection capacity at the community level of your SPF SIG project will be in place.

• State your commitment to participate in and meet the requirements of the SPF SIG Cross-Site Evaluation, which will be conducted by CSAP.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

• The strengths and weaknesses of the application as identified by peer reviewers and, when appropriate, approved by the appropriate National Advisory Council;

• Availability of funds;

• Equitable distribution of awards in terms of geography (including urban, rural and remote settings) and balance among target populations and program size; and

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points (Proposed Approach—35 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

2.1 General Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site at *http://www.samhsa.gov/grants/2004/useful_info.asp*.

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

—actions required to be in compliance with human subjects requirements;

—requirements relating to additional data collection and reporting;

—requirements relating to participation in a cross-site evaluation; or

—requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide quarterly and final progress reports. The final progress report must summarize information from the quarterly reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide quarterly and final financial status reports. These reports may be included as separate sections of quarterly and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that infrastructure development and enhancement efforts can be sustained, your financial reports must explain plans to ensure the sustainability (see Glossary—Appendix B) of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. The performance requirements for SAMHSA's SPF SIGs are described in Section I–2.5 under "Data and Performance Measurement" of this document.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

For questions on program issues, contact: Mr. Mike Lowther, Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II, Suite 930, Rockville, MD 20857, 301–443–0369, *mlowther@samhsa.gov*; or

Mr. Dave Robbins, Deputy Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention, Rockwall II, Suite 930, Rockville, MD 20857, 301–443–0369, *drobbins@samhsa.gov*.

For questions on grants management issues, contact:

Ms. Edna Frazier, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–6816, *efrazier@samhsa.gov*.

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

• Use the PHS 5161–1 application.

• Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the total number of allowed pages. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

• The 10 application components required for SAMHSA applications should be included. These are:

—Face Page (Standard Form 424, which is in PHS 5161–1)
—Abstract
—Table of Contents
—Budget Form (Standard Form 424A, which is in PHS 5161–1)
—Project Narrative and Supporting Documentation
—Appendices
—Assurances (Standard Form 424B, which is in PHS 5161–1)
—Certifications (a form in PHS 5161–1)
—Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
—Checklist (a form in PHS 5161–1)

• Applications should comply with the following requirements:

—Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the specific funding announcement.
—Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.
—Documentation of nonprofit status as required in the PHS 5161–1.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink, and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available from recognized experts regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant.

Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Logic Model: A logic model is a diagrammatic representation of a theoretical framework. A logic model describes the logical linkages among program resources, conditions, strategies, short-term outcomes, and long-term impact. More information on how to develop logic models and examples can be found through the resources listed in Appendix C.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—National Registry of Effective Programs

To help SAMHSA's constituents learn more about science-based programs, SAMHSA's Center for Substance Abuse Prevention (CSAP) created a National Registry of Effective Programs (NREP) to review and identify effective programs. NREP seeks candidates from the practice community and the scientific literature. While the initial focus of NREP was substance abuse prevention programming, NREP has expanded its scope and now includes prevention and treatment of substance abuse and of co-occurring substance abuse and mental disorders, and psychopharmacological programs and workplace programs.

NREP includes three categories of programs: Effective Programs, Promising Programs, and Model Programs. Programs defined as Effective have the option of becoming Model Programs if their developers choose to take part in SAMHSA dissemination efforts. The conditions for making that choice, together with definitions of the three major criteria, are as follows.

Promising Programs have been implemented and evaluated sufficiently and are scientifically defensible. They have positive outcomes in preventing substance abuse and related behaviors. However, they have not yet been shown to have sufficient rigor and/or consistently positive outcomes required for Effective Program status. Nonetheless, Promising Programs are eligible to be elevated to Effective/Model status after review of additional documentation regarding program effectiveness. Originated from a range of settings and spanning target populations, Promising Programs can guide prevention, treatment, and rehabilitation.

Effective Programs are well-implemented, well-evaluated programs that produce consistently positive pattern of results (across domains and/or replications). Developers of Effective Programs have yet to help SAMHSA/CSAP disseminate their programs, but may do so themselves.

Model Programs are also well-implemented, well-evaluated programs, meaning they have been reviewed by NREP according to rigorous standards of research. Their developers have agreed with SAMHSA to provide materials, training, and technical assistance for nationwide implementation. That helps ensure the program is carefully implemented and likely to succeed.

Programs that have met the NREP standards for each category can be identified by accessing the NREP Model Programs Web site at *http://www.modelprograms.samhsa.gov.*

Appendix D—Performance Measures for the SPF SIG

This section further specifies the data to be collected and reported as described in Section I–2.5, Data and Performance Measurement.

National Outcomes and National Outcome Measures

This list represents the specific questions to be used to determine progress toward the National Outcome Measures listed in Section I–2.5. Grantees and subgrantees may be required to supply additional data to comply with any evaluations of the SPF SIG program and/or as required by SAMHSA. For the past 10 years, SAMHSA and the States have endeavored to bring accountability for performance to SAMHSA's Block Grants. SAMHSA and the States have identified seven key domains of resilience and recovery, including: abstinence from alcohol abuse or drug use, or decreased mental illness symptomatology; increased or retained employment and school enrollment; decreased involvement with the criminal justice system; increased stability in family and living conditions; increased access to services; increased retention in services (substance abuse) or decreased utilization of psychiatric inpatient beds (mental health); and increased social supports/social connectedness. These seven domains, as well as three outcomes identified by the OMB Program Assessment Rating Tool (PART) process—client perception of care, cost effectiveness, and use of evidence-based practices—constitute the ten National Outcomes.

Specifically, with regard to substance abuse prevention, SAMHSA's Center for Substance Abuse Prevention (CSAP) and a group of State prevention officials have met regularly to identify and define the performance measures now being tested by the States as part of CSAP's original State Incentive Grant program, many of which are taken from existing data sources, such as CSAP's Minimum Data Set or its Core Measures Initiative. The measures listed in Section I–2.5 and the data elements for each

measure provided below are the National Outcome Measures for substance abuse prevention.

Developmental Measures

As indicated, some of the specific National Outcome Measures for substance abuse prevention are "developmental," requiring further work by SAMHSA and the States to delineate the best measures to assess progress toward reporting National Outcomes. Specifically, these developmental measures include measures for the National Outcomes of returning to/staying in school (school attendance, ATOD-related suspensions/expulsions, drug-related workplace injuries), decreased criminal justice involvement (drug-related crime), increased stability in family and living conditions (parent participation in prevention activities), and cost effectiveness (increase services provided within cost bands).

For these developmental measures, SAMHSA is asking grantees to develop their own data sources and data elements and be prepared to discuss their initial experience with the sources and elements at a grantee meeting three months after the grant period begins. Given that it is SAMHSA's intent to have the same National Outcome measures for both this program and the substance abuse prevention activities funded by the SAPT Block Grant, SAMHSA will also ask State officials working on the prevention portion of the SAPT Block Grant to participate in that meeting. At the meeting, participants will identify and agree to data elements and data collection approaches for the developmental measures. By having the same National Outcome Measures, data sources, and data elements for both the SPF SIG and the prevention portion of the SAPT Block Grant, SAMHSA hopes to minimize the reporting burden on the States and enable SAMHSA and the States to effectively monitor participant and program outcomes and help direct systems improvements.

Grantees and State Block Grant officials will also work with SAMHSA to identify a measure, data source and data elements for the National Outcome of Increased Social Supports/Social Connectedness.

SAMHSA anticipates that its work with State officials to finalize these developmental measures will be part of its collaboration with the States to continually assess and improve the National Outcome Measures.

In its application, the State should demonstrate how it intends to ensure that outcome and financial data is reported in a timely manner. States should describe how they intend to ensure that outcome data are reported on the following National Outcomes:

1. Abstinence From Drug Use/Alcohol Abuse

1.1 30-Day Substance Use (Non-use/reduction in use)

(Data Source: CSAP Core Measures*)

Data Elements

Tobacco

(1) How frequently have you smoked cigarettes during the past 30 days?

1. Not at all
2. Less than one cigarette per day
3. One to five cigarettes per day
4. About one-half pack per day
5. About one pack per day
6. About one and one-half packs per day
7. Two packs or more per day

(2) How often have you taken smokeless tobacco during the past 30 days?

1. Not at all
2. Once or twice
3. Once or twice per week
4. Three to five times per week
5. About once a day
6. More than once a day

(3) To be more precise, during the past 30 days about how many cigarettes have you smoked per day?

1. None
2. Less than 1 per day
3. 1 to 2
4. 3 to 7
5. 8 to 12
6. 13 to 17
7. 18 to 22
8. 23 to 27

Alcoholic beverages include beer, wine, wine coolers, and liquor.

(4) On how many occasions during the last 30 days have you had alcoholic beverages to drink (more than just a few sips)?

1. 0 occasions
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

(5) On how many occasions during the past 30 days (if any) have you been drunk or very high from drinking alcoholic beverages?

1. 0 occasions
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

Marijuana, hashish, inhalants, LSD

(6) On how many occasions during the past 30 days (if any) have you used marijuana (grass, pot) or hashish (hash, hash oil)?

1. 0 occasions
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

(7) During the LAST MONTH, about how many marijuana cigarettes (joints, reefers), or the equivalent, did you smoke a day, on the average? (If you shared them with other people, count only the amount YOU smoked).

1. None
2. Less than 1 a day
3. 1 a day
4. 2–3 a day
5. 4–6 a day
6. 7–10 a day
7. 11 or more a day

(8) On how many occasions during the last 30 days (if any) have you sniffed glue, or breathed the contents of aerosol spray cans, or inhaled any other gases or sprays in order to get high?

1. 0
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

(9) On how many occasions (if any) in the last 30 days have you taken LSD ("acid")?

1. 0
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

Amphetamines are sometimes called: uppers, ups, speed, bennies, dexies, pep pills, diet pills, meth or crystal meth. They include the following drugs: Benzedrine, Dexedrine, Methedrine, Ritalin, Preludin, Dexamyl, and Methamphetamine.

(10) On how many occasions (if any) during the last 30 days have you taken amphetamines on your own—that is, without a doctor telling you to take them?

1. 0
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

Cocaine, Crack Cocaine

(11) On how many occasions (if any) during the last 30 days have you taken "crack" (cocaine in chunk or rock form)?

1. 0
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

(12) On how many occasions (if any) during the last 30 days have you taken cocaine in any other form (like cocaine powder)?

1. 0
2. 1–2 occasions
3. 3–5 occasions
4. 6–9 occasions
5. 10–19 occasions
6. 20–39 occasions
7. 40 or more occasions

1.2 Availability of alcohol, tobacco and other drugs

Data Source: CSAP Core Measures* p. 206 (subset of full scale)

Data Elements

(1) If you wanted to get some beer, wine, or hard liquor (for example, vodka, whiskey or gin), how easy would it be for you to get some?

Very hard
Sort of hard
Sort of easy
Very easy

(2) If you wanted to get some cigarettes, how easy would it be for you to get some?

Very hard

Sort of hard
Sort of easy
Very easy

(3) If you wanted to get some marijuana, how easy would it be for you to get some?

Very hard
Sort of hard
Sort of easy
Very easy

(4) If you wanted to get a drug like cocaine, LSD, or amphetamines, how easy would it be for you to get some?

Very hard
Sort of hard
Sort of easy
Very easy

1.3 Perception of Drug Use as Harmful

Data Source: CSAP Core Measures* p. 76 (subset of full scale)

Data Elements

(1) How much do you think people risk harming themselves (physically or in other ways) if they smoke one or more packs of cigarettes per day?

No risk
Slight risk
Moderate risk
Great risk
Can't say/Drug unfamiliar

(2) How much do you think people risk harming themselves (physically or in other ways) if they try marijuana once or twice?

No risk
Slight risk
Moderate risk
Great risk
Can't say/Drug unfamiliar

(3) How much do you think people risk harming themselves (physically or in other ways) if they smoke marijuana regularly?

No risk
Slight risk
Moderate risk
Great risk
Can't say/Drug unfamiliar

(4) How much do you think people risk harming themselves (physically or in other ways) if they take one or two drinks nearly every day?

No risk
Slight risk
Moderate risk
Great risk
Can't say/Drug unfamiliar

(5) How much do you think people risk harming themselves (physically or in other ways) if they have five or more drinks once or twice each weekend?

No risk
Slight risk
Moderate risk
Great risk
Can't say/Drug unfamiliar

1.4 Attitude Toward Use (Perception of Drug Use as Wrong)

Data Source: CSAP Core Measures* p. 71

Data Elements

(1) How wrong do you think it is for someone your age to drink beer, wine or hard liquor (for example, vodka, whiskey or gin) regularly?

Very wrong
Wrong
A little bit wrong
Not at all wrong

(2) How wrong do you think it is for someone your age to smoke cigarettes?

Very wrong
Wrong
A little bit wrong
Not at all wrong

(3) How wrong do you think it is for someone your age to smoke marijuana?

Very wrong
Wrong
A little bit wrong
Not at all wrong

(4) How wrong do you think it is for someone your age to use LSD, cocaine, amphetamines or another illegal drug?

Very wrong
Wrong
A little bit wrong
Not at all wrong

2. Increased/Retained Employment or Return to/Stay In School

2.1 School Attendance—DEVELOPMENTAL

Data Source: Social indicator data.

2.2 ATOD-Related Suspensions/ Expulsions—DEVELOPMENTAL

Data Source: Social indicator data.

2.3 Drug-Related Workplace Injuries—DEVELOPMENTAL

Data Source: Social indicator and/or workplace-specific data.

3. Decreased Criminal Justice Involvement

3.1 Drug-Related Crime—DEVELOPMENTAL

Data Source: Social indicator data.

4. Increased Stability in Family and Living Conditions

4.1 Parent Participation in Prevention Activities—DEVELOPMENTAL

Data Source: Program-specific data.

5. Increased Access to Services (Service Capacity)

5.1 Number of Persons Served by Age, Gender, Race and Ethnicity

Data Source: CSAP Minimum Data Set, *http://prevtech.samhsa.gov* or compatible management information system)

Data Elements

(1) Attendees/Participants by Age

Age 0–4
Age 5–11
Age 12–14
Age 15–17
Age 18–20
Age 21–24
Age 25–44
Age 45–64
Age 65+

(2) Attendees/Participants by Gender

New Participants, Male
New Participants, Female

(3) Attendees/Participants by Racial/Ethnic Category

Are you Hispanic or Latino?
Yes
No

What is your race? (Select one or more)
Black or African American
Asian
American Indian
Alaska Native
White
Native Hawaiian or Other Pacific Islander

6. Increased Social Supports/Social Connectedness—Measure To Be Identified

7. Cost Effectiveness

7.1 Increase Services Provided Within Cost Bands—DEVELOPMENTAL

Data Source: To be determined

8. Use of Evidence-Based Practices

8.1 Total Number of Evidence-based Programs and Strategies Funded by SPF SIG

Data Source: SIG Subrecipient Checklist

Data Elements:

8.1.1 Is this intervention science-based? (Check yes or no.)

1. Yes.
2. No.

Science-Based Interventions (Part II, Questions 10–13) have been reviewed by experts in the field according to predetermined standards of empirical research. Science-based programs are theory based, have sound research methodology, and can support that effects are clearly linked to the program itself and not to extraneous events. Results from science-based programs may be positive, neutral, or negative.

* The CSAP Core Measures Notebook is available at *http://www.samhsa.gov/grants/2004/downloads/CSAP_Core_Measures.doc* (Word version) or *http://www.samhsa.gov/grants/2004/downloads/CSAP_Core_Measures.pdf* (PDF version).

OMB clearance is required for all data collection activities. All data is to be shared with SAMHSA/CSAP per the Terms and Conditions of the award.

Dated: April 23, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–9656 Filed 4–28–04; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the

following Customs broker licenses are canceled without prejudice.

Name	License No.	Issuing port
G.H. Matthes Co., Inc.	16882	New York.
Richard Murray, III	3408	Washington, DC.
Fernando L. Lozano	21724	Laredo.
Marathon Freight Services, Inc.	08096	New York.
American Brokerage Int'l Inc.	21151	Portland, OR.

Dated: April 13, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–9749 Filed 4–28–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker Licenses Due to Death of the License Holder

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

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Kenneth E. Lacy	05962	San Francisco.
Sheila P. Wolff	11935	Washington, DC.
Betty J. Wilderspin	6381	Dallas.

Dated: April 13, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–9748 Filed 4–28–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–31]

Notice of Submission of Proposed Information Collection to OMB; Contract Administration—Public and Indian Housing

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue to collect information and require recordkeeping by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) in conjunction with the oversight of construction contracts for development of new low-income housing developments or modernization of existing developments.

DATES: *Comments Due Date:* June 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0039) should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Contract Administration—Public and Indian Housing.

OMB Approval Number: 2577–0039.

Form Numbers: HUD–5372, HUD–51000.

Description of the Need for the Information and Its Proposed Uses: This is a request for approval to continue to collect information and require recordkeeping by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) in conjunction with the oversight of construction contracts for development of new low-income

housing developments or modernization of existing developments.

Respondents: State, local, or tribal government.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,527	4		1.21		17,142

Total Estimated Burden Hours: 17,142.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 22, 2004.

Wayne Eddins,

Departmental PRA Compliance Officer, Office of the Chief Information Officer.

[FR Doc. 04–9655 Filed 4–28–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Incidental Take of Marine Mammals During Specified Activities Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, will submit to OMB the collection of information described for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements and explanatory material may be obtained by contacting our Information Collection Clearance Officer at the address or phone number listed below.

DATES: You must submit comments on or before June 28, 2004.

ADDRESSES: Your comments and suggestions on specific requirements should be sent to our Information Collection Clearance Officer, Anissa Craghead, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., MS 222, Arlington, VA 22203, telephone (703) 358–2445, fax (703) 358–2269.

FOR FURTHER INFORMATION CONTACT: Diane Bowen, Division of Habitat and Resource Conservation, Branch of Resource Management Support Arlington, Virginia, at (703) 358–2161, or Craig Perham, Office of Marine Mammals Management, Anchorage, Alaska, at (907) 786–3810.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We are submitting a request to OMB to renew its approval of a collection of information concerning applications for the incidental take of marine mammals during specified activities. We are requesting a three-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0070.

Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972 authorizes us, acting on behalf of the Secretary of the Interior, to allow the incidental, unintentional take of small numbers of marine mammals during a specified activity (other than commercial fishing) in a specified geographic region. Prior to allowing these takes, however, we must find that the total of such taking will have a negligible impact on the species or stocks, and will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses by Alaska Natives.

The information that we propose to collect will be used to evaluate applications for specific incidental take regulations from the oil and gas industry to determine whether such regulations, and subsequent Letters of Authorization (LOA), should be issued; the information is needed to establish the scope of specific incidental take regulations. The information is also required to evaluate the impacts of the activities on the species or stocks of the marine mammals and on their availability for subsistence uses by Alaska Natives. It will ensure that all available means for minimizing the incidental take associated with a specific activity are considered by applicants.

We estimate that the total annual burden associated with the request will be 2,027 hours (6,080 divided by 3). This represents an average annual estimated burden taken over a 3 year-period, which includes the initial 200 hours required to complete the request for specific procedural regulations (68 FR 66744). For each LOA expected to be requested and issued subsequent to issuance of specific procedural regulations, we estimate that 28 hours per project will be invested: 8 hours will be required to complete each request for a LOA, 12 hours will be required for on-site monitoring activities, and 8 hours will be required to complete each final monitoring report. We estimate that ten companies will be requesting LOAs and submitting monitoring reports annually for each of seven sites in the region covered by the specific regulations.

Title: Marine Mammals: Incidental Take of Marine Mammals During Specified Activities Applications, 50 CFR 18, Subpart J.

OMB Number: 1018–0070.

Bureau form number: None.

Frequency of collection: Semi-annually.

Description of respondents: Oil and gas industry companies.

Total Annual Responses: 140 (2 per project × 70 projects).

Total Annual Burden Hours: 2,027.

Your comments are invited on: (1) Whether this collection of information is necessary for us to properly perform our functions, including whether this information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we use; (3) ways to enhance the quality, utility, and clarity of the information we are proposing to collect; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 8, 2004.

Anissa Craghead,

Information Collection Officer, U.S. Fish and Wildlife Service.

[FR Doc. 04–9672 Filed 4–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Marking, Tagging, and Reporting Program for Polar Bear, Pacific Walrus, and Sea Otter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, will submit to OMB the collection of information described below for approval and renewal under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms, and explanatory material may be obtained by contacting our Information Collection Officer at the address or phone number listed below.

DATES: You must submit comments on or before June 28, 2004.

ADDRESSES: Your comments and suggestions on specific requirements should be sent to our Information Collection Clearance Officer, Anissa Craghead, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., MS 222, Arlington, VA 22203, telephone 703/358–2445, fax 703/358–2269.

FOR FURTHER INFORMATION CONTACT: Colleen Corrigan, Division of Habitat and Resource Conservation, Branch of Resource Management Support, Arlington, Virginia, at 703/358–2161, or Dean Cramer, Office of Marine Mammals Management, Anchorage, Alaska, at 907/786–3806.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)). We are submitting a request to OMB to renew its approval of a collection of information concerning marking, tagging, and reporting requirements for the take of polar bear, northern sea otter, and pacific walrus. We are requesting a three-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0066.

In October 1988, pursuant to provisions of section 109(i) of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361–1407), we implemented formal Marking, Tagging, and Reporting Regulations in 50 CFR 18.23(f) for Alaskan Natives harvesting polar bear (*Ursus maritimus*), northern sea otter (*Enhydra lutris kenyoni*), and Pacific walrus (*Odobenus rosmarus divergens*) in Alaska. Under section 101(b) of the MMPA, Alaskan Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest these species for subsistence or handicraft purposes. Section 109(i) of the MMPA authorizes us, acting on behalf of the Secretary of the Interior, to prescribe marking, tagging, and reporting regulations applicable to this Alaskan Native subsistence and handicraft take.

On June 28, 1988, under authority of section 109(i) of the MMPA, we published a final rule in the **Federal Register** (53 FR 24277) that added paragraph (f) to our marine mammal regulations at 50 CFR 18.23. These regulations have enabled us to gather data on the Alaskan Native subsistence and handicraft harvest, and on the biology of polar bear, northern sea otter, and Pacific walrus in Alaska in order to determine what effect such take may be having on these populations. The regulations have also provided us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA.

The information that we propose to continue to collect from Alaskan Natives beyond the currently authorized period that expires on October 31, 2004 (under OMB Clearance Number 1018–0066), will be used to improve our decision-making ability upon which we can base future management decisions. Further, it will provide us with the ability to make inferences about the condition and general health of these populations. Without authority to collect this harvest information, our ability to measure the take of polar bear, sea otter and walrus is inadequate. We believe that mandatory marking, tagging and reporting is essential for us, in concert with Alaskan Natives, to be able to improve the quality and quantity of harvest and biological data necessary to base future management decisions and allows us to make rational, knowledgeable decisions regarding the Alaskan Native harvest.

We estimate that the total annual burden associated with this request will be 639 hours for each year of the 3-year period of OMB authorization. We calculated this estimated burden based on previous experience suggesting that Alaskan Natives annually will take a combined total of approximately 2,556 polar bears, northern sea otter, and Pacific walrus for subsistence and handicraft purposes, and that 15 minutes will be needed to provide the required information for each animal taken.

Title: Marine Mammal Marking, Tagging, and Reporting Certificates, 50 CFR 18.23 (f).

OMB Control Number: 1018–0066.

Bureau form numbers: R7–50, R7–51, and R7–52.

Frequency of collection: Occasional.

Description of respondents: Individuals and households.

Annual number of respondents: Approximately 2,556.

Estimated completion time: 15 minutes per response.

Total annual burden hours: 639 hours.

Approval expires: October 31, 2004.

Your comments are invited on: (1) Whether this collection of information is necessary for us to properly perform our functions, including whether this information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we use; (3) ways to enhance the quality, utility, and clarity of the information we are proposing to collect; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 14, 2004.

Anissa Craghead,

Information Collection Officer, U.S. Fish and Wildlife Service.

[FR Doc. 04–9673 Filed 4–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Exhibit B to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), Criminal Division, has submitted the following information collection request

to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 28, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., Criminal Division, Counterespionage Section/ Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

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 collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the 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:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Exhibit B to Registration Statement (Foreign Agents)

(3) The agency form number and the applicable component of the Department sponsoring the collection: Form CRM–155. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is required by the provisions of the Foreign Agents Registration Act of 1938, 22 U.S.C. 611, *et seq.*, and must set forth the agreement or understanding between the registrant and each of his foreign principals, as well as, the nature and method of performance of such agreement or understanding, and the existing or proposed activities engaged in or to be engaged in, including political activities, by the registrant for the foreign principal.

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* The total estimated number of responses is 164 at approximately 20 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 54 annual 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, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 23, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, PRA United States Department of Justice.

[FR Doc. 04–9703 Filed 4–28–04; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day notice of information collection under review: Supplemental Registration Statement of Individuals (Foreign Agents).

The Department of Justice (DOJ), Criminal Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 28, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please write to the U.S. Department of Justice, 10th & Constitution Avenue, NW., Criminal Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

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:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Supplemental Registration Statement of Individuals (Foreign Agents)

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–154. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The Form is required by the provisions of 22 U.S.C. 611, *et seq.*, must be filed by the foreign agent within thirty days after the expiration of each period of six months succeeding the original filing date, and must contain accurate and complete information with respect to the foreign agent's activities, receipts and expenditures.

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* There are approximately 491 respondents who will complete each response within approximately one and a half hours, twice a year.

(6) *As estimate of the total public burden (in hours) associated with the collection:* 1,350 annual burden hours.

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: April 21, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–9704 Filed 4–28–04; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on April 16, 2004, a proposed Consent Decree in *United States* v. *Macalloy Corp. and the BOC Group, Inc.*, Civil Action Number 2:04–1201–18, was lodged with the United States District Court for the District of South Carolina.

The consent decree resolves claims against two defendants brought by the United States on behalf of the Environmental Protection Agency ("EPA") under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs incurred and to be incurred by EPA in responding to the release and threatened release of hazardous substances at the Macalloy Superfund Site in Charleston, South Carolina. Under the Consent Decree, the Defendants will pay $357,663 for past costs, pay all of EPA's future costs relating to the Site, and perform the remedy for the Site as set forth in the completed Remedial Design for the Site. The United States covenants not to sue the two Defendants regarding the past costs, the work, and future costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Macalloy Corp. and the BOC Group, Inc.* DOJ Ref. # 90–11–2–07214.

The Consent Decree may be examined at the Office of the United States Attorney, District of South Carolina, 170 Meeting Street, 3rd Floor, Charleston, South Carolina 29401, and the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $19.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, to obtain a copy of the Consent Decree.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–9670 Filed 4–28–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 19, 2003 and published in the **Federal Register** on January 27, 2004, (68 FR 3946), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 323(a) and determined that the registration of Cambrex Charles City, Inc. to import the listed controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 29, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9659 Filed 4–28–04; 8:45 am]

BILLING CODE 4140–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 20, 2004, Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the product in bulk to distribute to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be file no later than June 28, 2004.

Dated: March 29, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9657 Filed 4–28–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Withdrawal of Application

By notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004 (68 FR 7656), IRIX Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm planned to manufacture methylphenidate for sale to its customers.

By letter dated February 18, 2004, IRIX Pharmaceuticals, Inc., requested that its registration as a Schedule II bulk manufacturer be retired. Therefore, IRIX Pharmaceuticals, Inc's renewal application to import the above listed controlled substance is hereby withdrawn.

Dated: March 29, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9660 Filed 4–28–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application.

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 30, 2003, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to produce bulk products for finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than June 28, 2004.

Dated: March 29, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9658 Filed 4–28–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 4, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Certificate of Electrical Training.

OMB Number: 1219–0001.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 450.

Number of Annual Responses: 1,626.

Estimated Time Per Response: 8 hours to conduct training and 25 minutes to complete the MSHA Form 5000–1.

Total Burden Hours: 3,829.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $221,508.

Description: Title 30 CFR 75.153(a)(2) and 77.103(a)(2) require that a program be provided for the qualification of certain experienced personnel as mine electricians. MSHA Form 5000–1 provides the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulations. The information provided on the form is used to determine if applicants satisfy the requirements to obtain the certification or qualification.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–9700 Filed 4–28–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "National Longitudinal Survey of Youth 1997." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before June 28, 2004.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1997 (NLSY97) is a nationally representative sample of persons who were born in the years 1980 to 1984. These respondents were ages 12–17 when the first round of annual interviews began in 1997; the eighth round of annual interviews is being conducted from November 2004 to May 2005. The Bureau of Labor Statistics (BLS) contracts with the Center for Human Resource Research (CHRR) of the Ohio State University to implement the NLSY97 survey. The National Opinion Research Center (NORC) of the University of Chicago is responsible for interviewing these youths on a yearly basis to study how young people make the transition from full-time schooling to the establishment of their families and careers. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY97, members of the academic community publish articles and reports based on NLSY97 data for the DOL and other funding agencies. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Bureau of Labor Statistics seeks approval to conduct rounds eight, nine, and ten of annual interviews of the NLSY97. Respondents to the NLSY97 will undergo an interview of approximately one hour during which they will answer questions about schooling and labor market experiences, family relationships, and community background.

During the fielding period for the main youth interviews, about 900 respondents will be asked to participate in a brief second interview to ascertain whether the initial interview took place as the interviewer reported and to assess the data quality of selected questionnaire items.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1997.

OMB Number: 1220–0157.

Affected Public: Individuals or households and not-for-profit institutions (public and private high schools).

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Youth Interview	7,900	Annually	7,900	60	7,900
Youth Validation Reinterview	900	Annually	900	6	90
Totals	7,900		8,800		7,990

The difference between the total number of respondents and the total number or responses reflects the fact that 900 respondents will be interviewed twice, once in the main survey and a second time in the validation reinterview.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of April, 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–9701 Filed 4–28–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Goodin Creek Mining Company, Inc.

[Docket No. M–2004–014–C]

Goodin Creek Mining Company, Inc., 340 South Broadway, Suite 200, Lexington, Kentucky 40508 has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) to its Mine #1 (MSHA I.D. No. 15–18176) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen detector on each coal hauling three-wheel tractor with drag bottom buckets in lieu of using machine mounted methane monitors. The petitioner states that the tractor operator will be trained in the proper use of the oxygen detector. The petitioner has listed in this petition specific terms and conditions that would be implemented when using its proposed alternative method at the Goodin Creek Mining Company, Inc., Mine #1. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Oxbow Mining, LLC

[Docket No. M–2004–015–C]

Oxbow Mining, LLC, P.O. Box 535, 3737 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1100–2(b) (Quantity and location of firefighting equipment) to its Elk Creek Mine (MSHA I.D. No. 05–04674) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to permit an alternative method for installing water lines for the entire length of the belt conveyors, in lieu of keeping the water line charged with water at all times, because in February 2003, the Oxbow Mining, LLC was granted a petition for modification to allow the use of intake air coursed through conveyor belt entries and the belt entry portal sits at approximately 6300 feet elevation, which causes freezing conditions of the existing water line in the conveyor entry during the winter. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Dolet Hills Lignite Company

[Docket No. M–2004–016–C]

Dolet Hills Lignite Company, 377 Highway 522, Mansfield, Louisiana 71052 has filed a petition to modify the application of 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems) to its Dolet Hills Lignite Mine (MSHA I.D. No. 16–01031) located in De Soto County, Louisiana. The petitioner requests a modification of the existing standard to allow an alternative method of compliance when raising or lowering the boom/mast at construction sites during initial Dragline assembly. The petitioner states that this method would only be used during the boom/mast raising/lowering process, and when raising and lowering the boom for construction/maintenance, the machine will not be performing mining operations. The procedure would also be applicable in instances of disassembly or major maintenance which require the boom to be raised or lowered. The petitioner has listed specific guidelines in this petition that would be followed to minimize the potential for electrical power loss during this critical boom procedure. The petitioner asserts that this procedure does not replace other mechanical precautions or the requirements 30 CFR 77.405(b) that are necessary to safely secure boom/masts during construction or maintenance procedures and that its proposed alternative method would not result in a diminution of safety to the miners, but would provide the same measure of protection to the miners as the existing standard.

4. Meadow Branch Mining Corporation

[Docket No. M–2004–017–C]

Meadow Branch Mining Corporation, P.O. Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Low Splint No. 1 Mine (MSHA I.D. No. 44–06883) located in Wise County, Virginia. The petitioner requests a modification of the existing standard to permit the use of belt air to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before June 1, 2004. Copies of these petitions are available for inspection at that address.

Dated in Arlington, Virginia this 23rd day of April, 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–9747 Filed 4–28–04; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; License No. NPF–03]

FirstEnergy Nuclear Operating Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a letter dated August 25, 2003, filed by Greenpeace pursuant to section 2.206 of title 10 of the Code of Federal Regulations (10 CFR) on behalf of the Nuclear Information & Resource Service and the Union of Concerned Scientists (collectively, the Petitioners). The Petitioners requested that the Nuclear Regulatory Commission (NRC) take enforcement actions against FirstEnergy Nuclear Operating Company (FirstEnergy), the licensee for Davis-Besse Nuclear Power Station in Oak Harbor, Ohio, and also requested that NRC suspend the Davis-Besse license and prohibit plant restart until certain

conditions have been met. As basis for the request to have the NRC take enforcement actions against the licensee, the Petitioners stated that FirstEnergy has failed to complete commitments related to the NRC's 50.54(f) design basis letter (issued on October 9, 1996), and referred to numerous design basis violations dating back to plant licensing (corresponding to Requests 1 and 2 in the Petitioners' August 25 letter). The Petitioners also requested that the NRC suspend the Davis-Besse license and prohibit plant restart until all design basis deficiencies identified in response to the NRC's 50.54(f) design basis letter are adequately addressed, the plant probabilistic risk assessment (PRA) is updated to reflect design flaws, and no systems are in a "degraded but operable" condition (corresponding to Requests 3, 4, and 5 in the Petitioners' August 25 letter).

In a letter dated October 7, 2003, the NRC informed the Petitioners that the issues in the Petition were accepted for review under 10 CFR 2.206 and had been referred to the Office of Nuclear Reactor Regulation for appropriate action. A copy of the acknowledgment letter is publicly available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML032690314. A copy of the Petition is publicly available in ADAMS under the Accession No. ML032400435.

The Petitioners' representatives met with NRC staff on September 17, 2003, to provide additional details in support of this request. This meeting was transcribed and the transcript is publicly available on the NRC Web site as a supplement to the Petition (*http://www.nrc.gov/ reactors/operating/ops-experience/vessel-head-degradation/controlled-correspondence.html*).

The licensee responded to the Petition on October 20, 2003 (ML033421458). This response was considered by the staff in its evaluation of the Petition.

In a letter dated November 26, 2003 (ML033010172), the NRC provided to the Petitioners its evaluation of their "immediate action" requests. The staff considered the Petitioners" requests to suspend the Davis-Besse license and prohibit plant restart until certain conditions have been met to be equivalent to "immediate action" requests because the Davis-Besse licensee might complete all necessary restart activities, and the NRC staff might complete all necessary oversight activities, before the staff could finalize the Director's Decision on this Petition. Requests 3, 4, and 5 in the Petitioners' August 25 letter were considered immediate action requests, and the staff's November 26 evaluation is repeated in Section II.D of the Director's Decision for completeness.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on February 5, 2004 (ML040280003). Neither the Petitioners nor the licensee provided comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petitioners' first request for enforcement based solely on failure of the licensee to complete commitments represents a misinterpretation of the agency's enforcement policies regarding commitments and therefore is denied. The Director of the Office of Nuclear Reactor Regulation has also determined that the Petitioners' second request for enforcement based on numerous design basis violations is in effect being granted by the actions already taken by the staff. The reasons for these decisions are explained in Director's Decision DD–04–01, the complete text of which is available in ADAMS, or is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the ADAMS Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated in Rockville, Maryland, this 22nd day of April, 2004.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–9692 Filed 4–28–04; 8:45 am]

BILLING CODE 7590–01–P

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 May 5–8, 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, May 5, 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 and the Office of Nuclear Security and Incident Response regarding safeguards and security matters.

Thursday, May 6, 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.–10:30 a.m.: Use of Mixed Oxide (MOX) Lead Test Assemblies at the Catawba Nuclear Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Duke Cogema Stone and Webster (DCS) regarding the license amendment submitted by DCS to obtain NRC authorization to use MOX lead test assemblies at the Catawba Nuclear Station.

10:45 a.m.–12:15 p.m.: Risk Management Technical Specifications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status/overview of the initiatives associated with the risk management technical specifications, and the staff's evaluation of the proposals for pilot application of the initiative on Risk-Informed Completion Times.

1:15 p.m.–3:15 p.m.: Trial/Pilot Implementation of Regulatory Guide 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding insights gained from the trial/

pilot implementation of Regulatory Guide 1.200.

3:30 p.m.–4:45 p.m.: Good Practices for Implementing Human Reliability Analysis (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and their contractors regarding the draft report on Good Practices for Implementing Human Reliability Analysis, as well as the ongoing efforts associated with the application of the methodology, "A Technique for Human Event Analysis (ATHEANA)."

5 p.m.–6:30 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 Divergence in Regulatory Requirements Between U.S. and Several Other Countries, and Resolution of Certain Items Identified by the ACRS in NUREG–1740 Related to Differing Professional Opinion on Steam Generator Tube Integrity.

Friday, May 7, 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.–10:30 a.m.: Potential Adverse Effects from Power Uprates (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding adverse effects experienced as a result of core power uprates and status of ongoing and proposed activities of the industry and the NRC staff to address this issue.

10:45 a.m.–11 a.m.: subcommittee Report on Fire Protection Issues (Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Fire Protection regarding matters discussed during the April 23, 2004 Subcommittee meeting.

11 a.m.–12 Noon: 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.

12 Noon–12:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (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.

1:15 p.m.–2:15 p.m.: Preparation for meeting with the Commissioners (Open)—The Committee will discuss topics scheduled for meeting with the NRC Commissioners in June 2004.

2:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, May 8, 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) P.L. 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).

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., e.t.

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., e.t., 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: April 23, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–9690 Filed 4–28–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice for Opportunity to Comment on Model Safety Evaluation on Technical Specification Improvement to Eliminate Requirements to Provide Monthly Operating Reports and Occupational Radiation Exposure Reports Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for Comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory

Commission (NRC) has prepared a model safety evaluation (SE) relating to the elimination of requirements for licensees to provide monthly operating reports (MORs) and occupational radiation exposure reports (ORERs). The requirements to submit MORs and ORERs are imposed on licensees through technical specifications. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to remove the requirements for these reports. Licensees of nuclear power reactors to which the models apply could request amendments confirming the applicability of the SE and NSHC determination to their reactors and providing the requested plant-specific verifications and commitments. The NRC staff is requesting comments on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires May 28, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

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 Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency and transparency 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. This notice is soliciting comment on a proposed change to the STS that removes requirements for providing MORs and ORERs. 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 to licensees. Those licensees opting to apply for the subject change to technical specifications 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 would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice for comment involves the elimination of requirements in the administrative controls in technical specifications for licensees to submit selected reports. The removal of the requirements to submit MORs and ORERs was proposed by the Technical Specification Task Force (TSTF) in Revision 1 to STS Change Traveler TSTF–369, accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession Number ML040050211) at the NRC web site *http://www.nrc.gov/reading-rm/adams.html*. 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*.

Applicability

This proposed change to remove requirements for MORs and ORERs is applicable to all nuclear power reactors.

To efficiently process incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–369 using the CLIIP to address the following plant-specific verifications and regulatory commitments. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Licensees choosing to request an approach different than that described in this notice should submit applications with appropriate plant-specific justifications for the proposed changes and an analysis of the issue of no significant hazards consideration. Variations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review.

Each licensee requesting approval to revise their technical specifications using the CLIIP will make a regulatory commitment to provide to the NRC the information defined in Generic Letter 97–02, "Revised Contents of the Monthly Operating Report," by the 21st of the month following the end of each calendar quarter. This coincides with the schedule for the submission of performance indicator data associated with the Reactor Oversight Process. The regulatory commitment will be based on use of an industry database (*e.g.*, the industry's Consolidated Data Entry (CDE) program, currently being developed and maintained by the Institute of Nuclear Power Operations).

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the SE or proposed NSHC determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of proposed action, which includes a proposed NSHC determination. A notice of issuance of an amendment of operating license will also be issued to announce the removal of the reporting requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change Traveler TSTF–369, Elimination of Requirements for Monthly Operating Reports and Occupational Radiation Exposure Reports.

1.0 Introduction

By application dated [DATE], [LICENSEE NAME] (the licensee), submitted a request for changes to the [PLANT NAME], Technical Specifications (TSs) (ADAMS Accession No. MLxxx). The requested change would delete TS [5.6.1], "Occupational Radiation Exposure Report," and TS [5.6.4], "Monthly Operating Reports," as described in the Notice of Availability published in the **Federal Register** on [DATE] (xx FR yyyyy).

2.0 Regulatory Evaluation

Section 182a. of the Atomic Energy Act of 1954, as amended, (the "Act") requires applicants for nuclear power plant operating licenses to state TS to be included as part of the license. The Commission's regulatory requirements related to the content of TSs are set forth in 10 CFR 50.36, "Technical specifications." The regulation requires that TSs include items in five specific categories, including (1) safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements; (4) design features; and (5) administrative controls. However, the regulation does not specify the particular requirements to be included in a plant's TSs.

The Commission has provided guidance for the content of TSs in its "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors' (58 FR 39132, published July 22, 1993), in which the Commission indicated that compliance with the Final Policy Statement satisfies Section 182a. of the Act. The Final Policy Statement identified four criteria to be used in determining whether a particular item should be addressed in the TSs as an LCO. The criteria were subsequently incorporated into 10 CFR 50.36 (60 FR 36593, published July 19, 1995). While the criteria specifically apply to LCOs, the Commission indicated that the intent of these criteria may be used to identify the optimum set of administrative controls in TSs. Addressing administrative controls, 10 CFR 50.36 states that they are "the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner." The specific content of the administrative controls section of the TS is, therefore, related to those programs and reports that the Commission deems essential for the safe operation of the facility, which are not adequately covered by regulations or other regulatory requirements. Accordingly, the staff may determine that specific requirements, such as those associated with this change, may be removed from the administrative controls in the TS if they are not explicitly required by 10 CFR 50.36(c)(5) and are not otherwise necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.

The impetus for the monthly operating report (MOR) came from the 1973–1974 oil embargo. Regulatory Guide 1.16, Revision 4, "Reporting of Operating Information—Appendix A Technical Specifications," published for comment in August 1975, identifies operating statistics and shutdown experience information that was desired in the operating report at that time. In the mid-1990s, the NRC staff assessed the information that is submitted in the MOR and determined that while some of the information was no longer used by the staff, the MOR was the only source of some data used in the NRC Performance Indicator (PI) Program of that time period (see NRC Generic Letter (GL) 97–02, "Revised Contents of the Monthly Operating Report"). Beginning in the late 1990s, the NRC developed and implemented a major revision to its assessment, inspection, and enforcement processes through its Reactor Oversight Process (ROP). The ROP uses both plant-level PIs and inspections performed by NRC personnel. In conjunction with the development of the ROP, the NRC developed the Industry Trends Program (ITP). The ITP provides the NRC a means to assess overall industry performance using industry level indicators and to report on industry trends to various stakeholders (*e.g.*, Congress). Information from the ITP is used to assess the NRC's performance related to its goal of having "no statistically significant adverse industry trends in safety performance." The ITP uses some of the same PIs as the PI Program from the mid-1990s and, therefore, the NRC has a continuing use for the data provided in MORs. The NRC also uses some data from the MORs to support the evaluation of operating experience, licensee event reports, and other assessments performed by the staff and its contractors.

Licensees are required by TSs to submit annual occupational radiation exposure reports (ORERs) to the NRC. The reports, developed in the mid-1970s, supplement the reporting requirements currently defined in 10 CFR 20.2206, "Reports of individual monitoring," by providing a tabulation of data by work areas and job functions. The NRC included data from the ORERs in its annual publication of NUREG–0713, "Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities," through the year 1997, but no longer includes the data in that or other reports.

3.0 Technical Evaluation

3.1 Monthly Operating Reports

As previously mentioned, the administrative requirements in TSs are reserved for "the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner." The current use of the information from the MORs is not related to reporting on or confirming the safe operation of specific nuclear power plants. Instead, the data is used by the NRC to assess and communicate with stakeholders regarding the overall performance of the nuclear industry. Data related to PIs for specific plants are reported to the NRC as part of the ROP. The staff has determined that the MORs do not meet the criteria defined for requirements to be included in the administrative section of TSs and the reporting requirement may, therefore, be removed.

Although the MORs do not satisfy the criteria for inclusion in TSs, the NRC staff nevertheless has a continuing need to receive the data in order to compile its reports on industry trends and to support other evaluations of operating experience. In addition, information such as plant capacity factors that are reported in the MORs are useful to the staff and are frequently asked for by agency stakeholders.

The NRC staff interacted with licensees, industry organizations, and other stakeholders during the development of the Consolidated Data Entry (CDE) program (currently being developed and maintained by the Institute of Nuclear Power Operation), regarding the use of an industry database like CDE to provide data currently obtained from MORs. These discussions also involved the related Revision 1 to TSTF–369, "Removal of

Monthly Operating Report and Occupational Radiation Exposure Report." As described in Section 4 of this safety evaluation, the licensee is making a regulatory commitment to continue to provide the data identified in GL 97–02, following the removal of the TS requirement to submit MORs, and will, therefore, continue to meet the needs of the NRC staff for the ITP and other evaluations. The use of an industry database such as CDE is more efficient and cost-effective for both the NRC and licensees than would be having the NRC staff obtain the needed information from other means currently available. Should a licensee fail to satisfy the regulatory commitment to voluntarily provide the information, the NRC could obtain the information through its inspection program (similar to the process described in NRC Inspection Procedure 71150, "Discrepant or Unreported Performance Indicator Data") with the cost passed on to the licensee.

The only significant changes resulting from the adoption of TSTF–369 are that the information will be provided quarterly instead of monthly (although the operating data will still be divided by month) and the form of the reporting will be from a consolidated database such as CDE instead of in correspondence from individual licensees. The change of reporting frequency to quarterly has some advantages for both the staff and licensees, since it will coincide with the collection and submission of the ROP PI data. In terms of the specific method used to transmit the data to the NRC, the licensee has committed (see Section 4.0) to provide data identified in GL 97–02 on a quarterly basis. The staff believes that the most efficient process for licensees and the NRC will be for all licensees to use a system such as CDE. Such systems have advantages in terms of improved data entry, data checking, and data verification and validation. The NRC will recognize efficiency gains by having the data from all plants reported using the same computer software and format. Although the data may be transmitted to the NRC from an industry organization maintaining a database such as CDE, the licensee provides the data for the system and remains responsible for the accuracy of the data submitted to the NRC for its plant(s). The public will continue to have access to the data through official agency records accessible on the Agencywide Documents Access and Management System (ADAMS).

3.2 Occupational Radiation Exposure Reports

The information that the NRC staff needs regarding occupational doses is provided by licensees in the reports required under 10 CFR Part 20. The data from the Part 20 reports are sufficient to support the NRC trending programs, radiation related studies, and preparation of reports such as NUREG–0713. Accordingly, the NRC's limited use of the ORER submitted pursuant to the existing TS requirements no longer warrants the regulatory burden imposed on licensees. Therefore, the staff finds it acceptable that TS [5.6.1] is being deleted and the ORER will no longer be submitted by the licensee.

[Note: For stations with both boiling and pressurized water reactors (*i.e.*, Salem/Hope Creek and Millstone) and for stations with both operating and shutdown reactors (*e.g.*, Dresden, Indian Point, Millstone, San Onofre, Three Mile Island), the NRC staff uses information provided in the ORERs to apportion the doses reported under 10 CFR Part 20 to the different categories of reactors at a single site. The licensees for facilities with different reactor types at a single site and those having both operating and shutdown reactors at a single site will include in their applications a regulatory commitment to provide information to the NRC annually (*e.g.*, with their annual submittal in accordance with 10 CFR 20.2206) to support the apportionment of the station doses to each type of reactor and to differentiate between operating and shutdown units. The data will provide the summary distribution of annual whole body doses as presented in Appendix B of NUREG–0713 for each reactor type and for operating and shutdown units.]

[The licensee's application included editorial and formatting changes such as the renumbering of TS sections to reflect the deletion of the sections related to MORs and ORERs. The NRC staff has reviewed these changes and found that they do not revise substantive technical or administrative requirements, and are acceptable.]

4.0 Verifications and Commitments

In order to efficiently process incoming license amendment applications, the staff requested each licensee requesting the changes addressed by TSTF–369 using the CLIIP to address the following plant-specific regulatory commitment.

4.1 Each licensee should make a regulatory commitment to provide to the NRC using an industry database the operating data (for each calender month) that is described in Generic Letter 97–02 "Revised Contents of the Monthly Operating Report," by the 21st of the month following the end of each calendar quarter. This coincides with the schedule for the submission of performance indicator data associated with the Reactor Oversight Process. The regulatory commitment will be based on use of an industry database (*e.g.*, the industry's Consolidated Data Entry (CDE) program, currently being developed and maintained by the Institute of Nuclear Power Operations).

The licensee has made a regulatory commitment to provide the requested data via an industry database (*i.e.*, the CDE) by the 21st of the month (coinciding with the schedule for the submission of performance indicator data associated with the Reactor Oversight Process) following each calendar quarter.

[4.2 Each licensee [(operating different reactor types at a single site) or (possessing both operating and shutdown reactors at a single site)] will include in its application a regulatory commitment to provide information to the NRC annually (*e.g.*, with its annual submittal in accordance with 10 CFR 20.2206) to support the apportionment of station doses [(to each type of reactor) or (to differentiate between operating and shutdown units)]. The data will provide the summary distribution of annual whole body doses as presented in Appendix B of NUREG–0713 for each reactor type and for operating and shutdown units.

The licensee has made a regulatory commitment to provide information to the NRC annually to support the apportionment of the station doses to each type of reactor and to differentiate between operating and shutdown units.] The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitment(s) can be provided by the licensee's administrative processes, including its commitment management program. The NRC staff has agreed that NEI 99–04, Revision 0, "Guidelines for Managing NRC Commitment Changes," provides reasonable guidance for the control of regulatory commitments made to the NRC staff (see Regulatory Issue Summary 2000–17, "Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff," dated September 21, 2000). The staff notes that this amendment establishes a voluntary reporting system for the operating data that is similar to

the system established for the ROP PI program.

5.0 State Consultation

In accordance with the Commission's regulations, the [STATE] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendment relates to changes in recordkeeping, reporting, or administrative procedures or requirements. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding (FR citation and date). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of amendment request: The requested change would delete Technical Specification (TS) [5.6.1], "Occupational Radiation Exposure Report," and [5.6.4], "Monthly Operating Reports," as described in the Notice of Availability published in the **Federal Register** on [DATE] (xx FR yyyyy).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the Technical Specification reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 21st day of April 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. 04–9691 Filed 4–28–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an information collection. SF 2817, Life Insurance Election, is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or "transfer" of the ownership of the life insurance). The form is used as the official agency record of the individual's coverage and enrollment status under the Federal Employees' Group Life Insurance (FEGLI) program, and as an acknowledgement and authorization by the individual for collection from him or her of the enrollee share of the premium contributions.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Christopher N. Meuchner, Life Insurance & Long Term Care Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415–3661.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management

Kay Coles James,

Director.

[FR Doc. 04–9740 Filed 4–28–04; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: OPM 1530

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. OPM 1530, Report of Medical Examination of Person Electing Survivor Benefit Under the Civil Service Retirement System, is used to collect information regarding an annuitant's health so that OPM can determine whether the insurable interest survivor benefit election can be allowed.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 500 OPM forms 1530 will be completed annually. The form takes approximately 90 minutes to complete. The annual burden is 750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–9741 Filed 4–28–04; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–10

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. RI 30–10, Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management (OPM) to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees' Retirement System.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 RI 30–10 forms will be completed annually. The form takes approximately one hour to complete. The annual burden is 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–9742 Filed 4–28–04; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program: Extension of Deadline for New Plan Applications

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is extending the deadline for receipt of applications from high deductible health benefits plans wishing to participate in the Federal Employees Health Benefits (FEHB) Program.

EFFECTIVE DATE: April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: The FEHB regulation at 5 CFR 890.203(a) describes the application process and deadline for comprehensive medical plans (usually referred to as health maintenance organizations) wishing to participate in the FEHB Program. The regulation states that plans must submit their application and supporting documentation by January 31 "or another date specified by OPM."

For the contract year beginning January 1, 2005, OPM is extending this application deadline. OPM will consider applications received by June 1, 2004. Health plans wishing to apply should contact Bill Stuart at OPM at (202) 606–0737 or *william.stuart@opm.gov* as soon as possible. Prospective applicants interested in offering a high deductible health plan can find additional information relating to high deductible

plans at *http://www.opm.gov/insure/health.*

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–9743 Filed 4–28–04; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 3a–4; SEC File No. 270–401; OMB Control No. 3235–0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 3a–4 under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" and "mutual fund wrap" programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a–4 are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a–4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) annually must contact the client to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) also must notify the client quarterly, in writing, to contact the sponsor (or the designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.[4]

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

Rule 3a–4 is intended primarily to provide guidance regarding the status of investment advisory programs under the Investment Company Act. The rule is not intended to create a presumption about a program that is not operated according to the rule's guidelines.

The requirement that the sponsor (or its designee) obtain information about the client's financial situation and investment objectives when the account is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the program manager to evaluate the client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure the client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that approximately 64 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a–4.[5] Although it is impossible to determine the exact number of clients that participate in investment advisory programs, an estimate can be made by dividing total assets by the minimum account requirement ($172.3 billion[6] divided by $40,714),[7] for a total of 4,231,960 clients. In addition, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 2000 through 2003, by the minimum account requirement ($13.4 billion divided by $40,714), for an average annual number of new accounts of 329,125.[8]

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) (62 FR 15098 (Mar. 31,1997)) ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. *See* 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

[5] These estimates are based on statistical information on wrap fee and mutual fund wrap programs provided by Cerulli Associates.

[6] The estimate of the amount of assets in wrap fee and mutual fund wrap programs was provided by Cerulli Associates.

[7] The estimate of the average minimum account requirement was provided by Cerulli Associates.

[8] The requirement for initial client contact and evaluation is not a recurring obligation, but only occurs when the account is opened. The estimated

The Commission staff estimates that each program sponsor spends approximately one hour annually in preparing, conducting and/or reviewing interviews for each new client; 30 minutes annually preparing, conducting and/or reviewing annual interviews for each continuing client; and one hour preparing and mailing quarterly account activity statements, including the notice to update information to each client. Based on the foregoing, the Commission staff therefore estimates the total annual burden of the rule's paperwork requirements for all program sponsors to be 6,512,502.5 hours. This represents a decrease of 7,636,910 hours from the prior estimate of 14,149,412.5 hours. The decrease results from a change in the method of computation of the amount of assets managed under investment advisory programs, and the resulting decrease in the estimated number of clients in those programs.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 21, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9711 Filed 4–28–04; 8:45 am]

BILLING CODE 8010–01–P

annual hourly burden is based on the average number of new accounts opened each year.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form U–6B–2; SEC File No. 270–169; OMB Control No. 3235–0163.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

The Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79a *et seq.*) requires the filing of an application and/or declaration on Form U–1 for prior Commission approval both for the issue and sale of a security and its acquisition by a company in a registered holding company system.[1] Section 6(b) provides that the Commission shall exempt from the requirement of filing a declaration on Form U–1, by rules and regulations or orders and subject to such terms and conditions, as it deems appropriate in the public interest or for the protection of investors or consumers, certain security issuances and sales.

Section 6(b) also contains a reporting requirement. It directs the issuer of securities exempted under section 6(b) to file with the Commission within ten days of the issue or sale a certificate of notification and directs the Commission to prescribe the form of and information required in this certificate. Rule 20(d) prescribes Form U–6B–2 as the form of certificate of notification to be filed pursuant to section 6(b). Form U–6B–2 is also prescribed by Rule 52(c) (17 CFR 250.52 (c)) and Rule 47(b) (17 CFR 250.47(b)) as the form of certificate of notification to be filed by a public utility subsidiary company of a registered holding company to notify the Commission of exempt issuances and sales of securities under Rule 52 Exemption of Issue and Sale of Certain Securities approved by state commissions and Rule 47 Exemption of Public Utility Subsidiaries as to Certain Securities Issued to the Rural Electrification Administration. The Commission receives about 177 Form U–6B–2s per year from 67 respondents who each file once, which imposes an annual burden of about 177 hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of SEC rules and forms.

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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or via e-mail at: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 26, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9714 Filed 4–28–04; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* section 6(a) (requiring prior Commission approval under the standards of section 7 for the issue and sale of securities) and section 9(a)(1) (requiring prior Commission approval under the standards of section 10 for the acquisition of securities).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49607; File No. SR–NASD–2004–057]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments To Reduce the Reporting Period for Transactions in TRACE-Eligible Securities

April 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been prepared by NASD. On April 16, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 22, 2004, NASD filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 6230(a) to reduce the period to report a transaction in a TRACE-eligible debt security in two stages: (i) from 45 to 30 minutes in stage one ("Stage One"), and (ii) subsequently, from 30 to 15 minutes in stage two ("Stage Two"). Rule 6230 is one of the Trade Reporting and Compliance Engine ("TRACE") rules. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

Stage One Rule Text:

* * * * *

6200. Trade Reporting and Compliance Engine (TRACE)

* * * * *

6230. Transaction Reporting

(a) When and How Transactions Are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within *30*[45] minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must transmit the report to TRACE during the hours the TRACE system is open ("TRACE system hours"), which are 8 a.m. eastern time through 6:29:59 p.m. eastern time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) Transactions Executed During TRACE System Hours

Transactions in TRACE-eligible securities executed on a business day at or after 8 a.m. eastern time through 6:29:59 p.m. eastern time must be reported within *30*[45] minutes of the time of execution. If a transaction is executed on a business day less than *30*[45] minutes before 6:30 p.m. eastern time, a member may report the transaction the next business day within *30*[45] minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

(2) Transactions Executed At or After 6:30 p.m. Through 11:59:59 p.m. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. eastern time through 11:59:59 p.m. eastern time must be reported the next business day within *30*[45] minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

(3) Transactions Executed At or After 12 a.m. Through 7:59:59 a.m. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 12 a.m. eastern time through 7:59:59 a.m. eastern time must be reported the same day within *30*[45] minutes after the TRACE system opens.

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within *30*[45] minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be "12:01:00 a.m. Eastern Time" (stated in military time as "00:01:00"); and the modifier, "special price," must be selected. In addition, the transaction must not be designated "as/of". When the reporting method chosen provides a "special price" memo field, the member must enter the actual date and time of the transaction in the field.

(5) and (6) No Change.

(b) through (f) No Change.

* * * * *

Stage Two Rule Text:

* * * * *

6200. Trade Reporting and Compliance Engine (TRACE)

* * * * *

6230. Transaction Reporting

(a) When and How Transactions Are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within *15*[30] minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must transmit the report to TRACE during the hours the TRACE system is open ("TRACE system hours"), which are 8 a.m. eastern time through 6:29:59 p.m. eastern time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) Transactions Executed During TRACE System Hours

Transactions in TRACE-eligible securities executed on a business day at or after 8 a.m. eastern time through 6:29:59 p.m. eastern time must be reported within *15*[30] minutes of the time of execution. If a transaction is executed on a business day less than *15*[30] minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within *15*[30] minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

(2) Transactions Executed At or After 6:30 p.m. Through 11:59:59 p.m. eastern time

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. eastern time through 11:59:59 p.m. eastern time must be reported the next business day within *15*[30] minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

(3) Transactions Executed At or After 12 a.m. Through 7:59:59 a.m. eastern time

Transactions in TRACE-eligible securities executed on a business day at or after 12 a.m. eastern time through 7:59:59 a.m. eastern time must be reported the same day within *15*[30] minutes after the TRACE system opens.

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed,

[3] *See* letter from Sharon K. Zackula, Assistant General Counsel, NASD, to Katharine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 16, 2004 ("Amendment No. 1"). Amendment No. 1 clarifies the effective dates that NASD will establish for the proposed rule change upon approval by the Commission.

[4] *See* letter from Sharon K. Zackula, Assistant General Counsel, NASD, to Katharine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 22, 2004 ("Amendment No. 2"). Amendment No. 2 amends the discussion of industry and regulatory trends in the securities industry favoring more "real-time" reporting and "real-time" transmission of transaction information for clearance and settlement.

at any time during that day (determined using eastern time), must be reported the next business day within *15*[30] minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be "12:01:00 a.m. eastern time" (stated in military time as "00:01:00"); and the modifier, "special price," must be selected. In addition, the transaction must not be designated "as/of". When the reporting method chosen provides a "special price" memo field, the member must enter the actual date and time of the transaction in the field.

(5) and (6) No Change.

(b) through (f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 6230(a) currently requires a member that is a party to a transaction in a TRACE-eligible security to report the transaction information to TRACE within 45 minutes of the time of execution.[5] NASD is proposing to reduce the period to report a transaction in two stages. In Stage One, the reporting period will be reduced from 45 minutes to 30 minutes, and, in Stage Two, the reporting period will be reduced from 30 minutes to 15 minutes.

Stage One: Reduction of Reporting Period to 30 Minutes

NASD is proposing to amend Rule 6230 to reduce the reporting period from 45 minutes to 30 minutes during Stage One. In Rule 6230(a), the general requirement to report transaction information within 45 minutes of the time of execution is restated as 30 minutes. In addition, NASD is proposing to amend the next-day reporting exceptions in Rules 6230(a)(1) through (4) to require that the report be filed within 30 minutes of the time the TRACE system opens instead of the current 45 minutes. Specifically, in Rule 6230(a)(1), a member *could elect* to report the next business day if a transaction occurs within 30 minutes before the TRACE system closing. If the member elects to report the following business day that the TRACE system is open, the member *must report* the transaction within 30 minutes after the TRACE system opens.[6] In addition, in Rule 6230(a)(2) through (4), a member would be required to report transaction information for specified transactions the next business day that the TRACE system is open and would be required to do so within 30 minutes after the system's opening.

The effective date of Stage One, the 30-minute reporting period, will be October 1, 2004.

Stage Two

In addition, NASD is proposing to amend Rule 6230 a second time to reduce the reporting period from 30 minutes to 15 minutes. The amended rule text set forth above as Stage Two contains the proposed changes.

The proposed rule change set forth in Stage Two also includes proposed amendments to Rule 6230(a)(1) through (a)(4) to reduce the reporting periods referenced therein from 30 minutes to 15 minutes; they are parallel to the amendments to paragraphs (a)(1) through (a)(4) of Rule 6230 that are proposed as part of Stage One and described above. Thus, NASD is proposing to amend the next-day reporting provisions in Rules 6230(a)(1) through (4) to require that a transaction report be filed within 15 minutes of the time the TRACE system opens instead of the 30-minute period that would then be in effect.[7]

The effective date of Stage Two, 15-minute reporting, will be July 1, 2005. Under the proposal, members will have nine months after 30-minute reporting is implemented to prepare for Stage Two 15-minute reporting.

Rationale for Reducing the Reporting Period

Consistent with longstanding NASD and SEC goals, NASD is proposing to reduce the reporting period from 45 minutes to 30 minutes, and from 30 minutes to 15 minutes, to improve transparency in the corporate debt securities markets for the benefit of investors and market participants. Reducing the reporting period to 30, then 15 minutes, will allow investors and market participants to obtain and evaluate pricing information more quickly than under the current reporting requirements, improving the timeliness and value of the information to investors and creating a qualitative increase in corporate bond market transparency.

By reducing the reporting period to 30, then 15 minutes, the reporting goal originally set forth in the proposed TRACE Rules in 1999 will be achieved.[8] In 2001, when the SEC approved the proposed TRACE Rules (then containing a 60-minute reporting period), the SEC stated its expectation that NASD would file a rule proposal within six months from the start date of TRACE to reduce the reporting period to 15 minutes. The SEC said, "NASD plans to reduce the time frame for reporting bond trades—from one hour to 15 minutes. * * *

[5] Limited exceptions to the general requirement are stated in Rule 6230(a)(1) through (4), which provide for reporting a transaction the next business day that the TRACE system is open in certain circumstances. Specifically, in Rule 6230(a)(1), a member currently *may elect* to report a transaction the next business day that the TRACE system is open at any time within 45 minutes after the TRACE system opens, if the member executed the trade the prior business day less than 45 minutes before the TRACE system closed. (Currently, on a business day, the TRACE system is open from 8 a.m. eastern time to 6:30 p.m. eastern time to receive reports.) In Rule 6230(a)(2) through (4), members are directed how to report trades that occur (1) after TRACE system hours, (2) before TRACE system hours, or (3) on a weekend or a holiday. In each case, the member must report the transaction the next business day that the TRACE system is open within 45 minutes of the opening.

[6] On days when NASD announces that the TRACE System will close early (*e.g.*, at 2 p.m. on the day after Thanksgiving or the day before Independence Day), NASD will announce the early closing and specify when the TRACE System will cease accepting reports. When early closings in TRACE occur, NASD interprets Rule 6230(a)(1), as allowing a member (for a transaction that occurs just before the end of the TRACE System closing) to report the transaction on the day of execution before the system closes or the next business day, to provide the member the same flexibility that is provided when the TRACE System closes at 6:30 p.m. eastern time. For example, if NASD announces that the TRACE System will close at 2 p.m. eastern time and will not accept reports after that time, a 30-minute reporting period is in effect, and a member executes a transaction at 1:40 p.m. eastern time, the member may report the transaction on the day of execution (through 2 p.m. eastern time) or may report the transaction the next business day that the TRACE System is open within 30 minutes of the opening.

[7] Specifically, in Rule 6230(a)(1), a member *could elect* to report the next business day if a transaction occurred within 15 minutes before the TRACE system closing. If the member elected to report the following business day that the TRACE system is open, the member *must report* the transaction within 15 minutes after the TRACE system opens. In addition, in Rule 6230(a)(2) through (4), a member would be required to report transaction information for specified transactions the next business day that the TRACE system is open and would be required to do so within 15 minutes after the system's opening.

[8] *See* SR–NASD–99–65, filed on October 27, 1999, and amendments thereto.

This will ensure that transaction information is reported to TRACE and released to the public before it becomes "stale.'"[9] The NASD's 15-minute reporting goal was also restated in SR–NASD–2003–78, which is the proposed rule change to reduce the reporting period from 75 minutes to 45 minutes that the SEC approved on June 18, 2003.[10]

In this proposed rule change, NASD is proposing to achieve 15-minute reporting in two stages for several reasons. Firms have expressed concern about their ability to achieve a 15-minute reporting standard, and a two-stage process will allow firms to make incremental improvements in their reporting processes and provide time for them to adjust to the shorter periods. In addition, NASD is proposing both stages of the reduction in this proposed rule change, rather than in two separate rule proposals, to provide notice to the industry of the NASD's general plan to achieve 15-minute reporting. By doing so, the industry has a longer period to prepare for the changes and should be able to make the technical and operational changes needed to achieve 15-minute reporting more efficiently. In fact, many transactions are currently reported to TRACE within the 30- and 15-minute timeframes. Approximately eighty-four percent (84%) of all trades reported to TRACE in the first two months of 2004 were reported within 30 minutes. In addition, during the same period approximately seventy-three percent (73%) of all trades were reported within 15 minutes.

NASD's proposal to reduce the reporting period is also timely, because it moves the corporate debt markets closer to general industry and regulatory trends favoring more "real-time" reporting, and "real-time" transmission of transaction information for clearance and settlement. The Depository Trust and Clearing Corporation ("DTCC") is working with the industry in an initiative called RTTM. Broker-dealers currently transmit trade information "real-time" using RTTM's interactive messaging, on more than 50% of all mortgage-backed securities transactions and on approximately 95% of all government securities transactions processed through DTCC.[11]

Finally, NASD's proposed rule change to reduce the reporting period is in accordance with SEC and industry requests for some degree of coordination regarding the reporting of debt securities. To accommodate TRACE participants' requests for a "single DTCC pipeline" to process and report both corporate and municipal securities transactions, NASD has worked with the industry and DTCC to coordinate the timing of the implementation of the 15-minute reporting requirement with DTCC's connection of RTTM directly to TRACE.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide NASD with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, will improve transparency for the benefit of customers and other market participants by reducing the period between the time of execution of a transaction and the dissemination of transaction information for securities subject to dissemination in furtherance of the public interest and for the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

A. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–057 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[9] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8135 (January 29, 2001) (SEC Order approving SR–NASD–99–65). There were a number of technical, operational, and regulatory issues to resolve before NASD believed it was appropriate to propose 15-minute reporting. Shortly before TRACE began, at the SEC's request, NASD developed a proposal to extend, rather than reduce, the reporting period from 60 minutes to 75 minutes to accommodate the DTCC's participation in TRACE for those firms that wished to report TRACE transactions via DTCC. (At that time, DTCC's system had certain operational limits, and 60-minute reporting would not have been possible using that system.) On October 1, 2003, 15 months after TRACE operated using a 75-minute reporting regimen, NASD reduced the reporting period to 45 minutes. This proposed rule change will reduce the reporting period to 15 minutes ultimately, in two stages.

[10] *See* Securities Exchange Act Release No. 47856 (May 14, 2003); 68 FR 27605 (May 20, 2003) (Notice of Filing of SR–NASD–2003–78 and Request for Comment), n. 7. SR–NASD–2003–78 was approved in Securities Exchange Act Release No. 48056 (June 18, 2003), 68 FR 37886 (June 25, 2003).

[11] Government securities transactions are processed at DTCC's Fixed Income Clearing Corporation ("FICC") in its Government Securities Division, and mortgage-backed securities transactions are processed in FICC's Mortgage-Backed Securities Division.

[12] 15 U.S.C. 78o–3(b)(6).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–057 and should be submitted on or before May 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9715 Filed 4–28–04; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB)—Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA)—Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–NEW.* The information collected on forms SSA–L–706 and SSA–L–106 is used by SSA to assist a claimant in obtaining evidence necessary to establish age. The respondents are applicants for Social Security benefits.

Type of Request: Form in use without OMB Number.

Number of Respondents: 7,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,200 hours.

2. *Medical Report (General)—20 CFR 404.1512–404.1515 and 416.912–416.915—0960–0052.* The information collected on form SSA–3826–F4 is used by SSA to determine a claimant's physical status prior to making a disability determination. This information is also placed in the claimant's disability claims folder to provide written medical evidence which is used in the disability determination decision. The respondents are physicians, hospitals, directors, and medical records librarians.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 375,000 hours.

3. *Certificate of Coverage Request Form—0960–0554.* The United States (U.S.) has Social Security agreements with 20 countries. These agreements eliminate double Social Security coverage and taxation where a period of work would be subject to coverage and taxes in both countries. The individual agreements contain rules for determining the country under whose laws the period of work will be covered and to whose system taxes will be paid. The agreements further provide that upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information collected is needed to determine if a period of work is covered by the U.S. system under an agreement and to issue a certificate of coverage. The respondents are workers and employers wishing to establish an exemption from foreign Social Security taxes.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 46,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 23,000 hours.

4. *Representative Payee Report—20 CFR 404.265, 416.665—0960–NEW.* The information collected on Form SSA–6234 is sent to all organizational representative payees (*i.e.* institutions, agencies) to determine whether the payments received on behalf of the beneficiaries have been used for their current maintenance and personal needs; to ensure that the payee continues to be concerned about the beneficiary's welfare; and to ascertain if the beneficiary is being charged a fee appropriately and how much the fee is. The respondents are all organizational representative payees for beneficiaries receiving Social Security benefits or Supplemental Security Income (SSI) payments.

Type of Request: New information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 187,500 hours.

5. *Farm Self-Employment Questionnaire—20 CFR 404.1095—0960–0061.* Section 211(a) of the Social Security Act requires the existence of a trade or business as a prerequisite for determining whether an individual or partnership may have "net earnings from self-employment." Form SSA–7156 elicits the information necessary to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. The respondents are applicants for Social Security benefits, whose entitlement depends on whether the worker has covered earnings from self-employment as a farmer.

[13] 17 CFR 200.30–3(a)(12).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Total Estimated Annual Burden: 7,917 hours.

6. *Child-Care Dropout Questionnaire—20 CFR 404.211(e)(4)—0960–0474.* The information collected on Form SSA–4162 is used by SSA to determine whether an individual qualifies for child care exclusion in computing the individual's disability benefit amount. The respondents are applicants for disability benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 167 hours.

7. *Appointment of Representation—20 CFR 404.1707, 410.684, and 416.1507—0960–0527.* The information collected by SSA on form SSA–1696-U4 is used to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The affected public consists of applicants who notify SSA that they have appointed a person to represent them in their dealings with SSA when claiming a right to benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 551,520.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 91,920 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330 and 404.339—0960–0019.* SSA uses the information collected on form SSA–781 to decide if "in care" requirements are met by non-custodial parent(s), who are filing for benefits based on having a child in care. The respondents are non-custodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,333 hours.

2. *Response to Notice of Revised Determination—20 CFR 404.913–404.914 and 992(b), 416.1413–416.1414 and 1492—0960–0347.* Form SSA–765 is used by claimants to request a disability hearing and/or to submit additional evidence before a revised reconsideration determination is issued. The respondents are claimants who file for a disability hearing in response to a notice of revised determination for disability insurance and/or SSI under Titles II (Old-Age, Survivors, and Disability Insurance) and XVI (SSI).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,925.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 963 hours.

3. *Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.907–404.921 and 416.1407–416.1421—0960–0351.* SSA uses form SSA–770 to obtain information from substitute parties regarding their intention to pursue the appeals process for an individual who has died. The respondents are such parties.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 200 hours.

4. *Disability Hearing Officer's Decision—20 CFR 404.917 and 416.1417—0960–0441.* The Social Security Act requires that SSA provide an evidentiary hearing at the reconsideration level of appeal for claimants who have received an initial or revised determination that a disability did not exist or has ceased. Based on the hearing, the disability hearing officer (DHO) completes form SSA–1207 and all applicable supplementary forms (which vary depending on the type of claim). The DHO uses the information in documenting and preparing the disability decision. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The respondents are DHOs in the State Disability Determination Services (DDS).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 65,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 48,750 hours.

5. *Information about Joint Checking/Savings Account—20 CFR 416.1201 and 416.1208—0960–0461.* Form SSA–2574 is used to collect information from the claimant and the other account holder(s) when a Supplemental Security Income (SSI) applicant/recipient objects to the assumption that he/she owns all or part of the funds in a joint account bearing his or her name. These statements of ownership are required to determine whether the account is a resource of the SSI claimant. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

6. *Beneficiary Contact Report—20 CFR 404.703 and 404.705—0960–0502.* SSA uses the information collected by form SSA–1588–OCR–SM to ensure that eligibility for benefits continues after entitlement. SSA asks parents information about their marital status and children in-care to detect overpayments and to avoid continuing payment to those who are no longer entitled. The respondents are recipients of survivor mother/father Title II (OASDI) benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 133,400.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 11,117 hours.

7. *Earnings Record Information—20 CFR 404.801–404.803 and 404.821–404.822—0960–0505.* The information collected by form SSA–L3231–C1 is used to ensure that the proper person is credited for working when earnings are reported for a minor under age seven years. The respondents are businesses reporting earnings for children under age 7.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

8. *Internet Direct Deposit Application—31 CFR part 210—0960–0634.* SSA uses Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information received from beneficiaries to facilitate DD/EFT of their Social Security benefits with a financial institution. Respondents are Social Security beneficiaries who use the Internet to enroll in DD/EFT.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,500 hours.

9. *Authorization to Disclose Information to the Social Security Administration—20 CFR Subpart O, 404.1512 and Subpart I, 416.912—0960–0623.* SSA must obtain sufficient medical evidence to make eligibility determinations for the Social Security disability benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use form SSA–827 to provide consent for release of information. Generally, the State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for Social Security disability benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response: 4.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,569,285 hours.

Dated: April 20, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–9511 Filed 4–28–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4697]

Determination Pursuant to Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act, as Amended, Placing Entities on the Terrorist Exclusion List (TEL)

Acting under the authority of section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1182(a)(3)(B)(v1)(II), and in consultation with the Attorney General and the Secretary of Homeland Security, I hereby determine that each of the following entities is a "terrorist organization" within the meaning of that section of the INA:

Babbar Khalsa International;

Communist Party of Nepal (Maoist)
(a.k.a. CPN(M), a.k.a. the United Revolutionary People's Council, a.k.a. the People's Liberation Army of Nepal);

Dhamat Houmet Daawa Salafia
(a.k.a. Group Protectors of Salafist Preaching; a.k.a. Houmat Ed Daawa Es Salifiya; a.k.a. Katibat El Ahoual; a.k.a. Protectors of the Salafist Predication; a.k.a. El-Ahoual Battalion; a.k.a. Katibat El Ahouel; a.k.a. Houmate Ed-Daawa Es-Salafia; a.k.a. the Horror Squadron; a.k.a. Djamaat Houmat Eddawa Essalafia; a.k.a. Djamaatt Houmat Ed Daawa Es Salafiya; a.k.a. Salafist Call Protectors; a.k.a. Djamaat Houmat Ed Daawa Es Salafiya; a.k.a. Houmate el Da'awaa es-Salafiyya; a.k.a. Protectors of the Salafist Call; a.k.a. Houmat ed-Daaoua es-Salafia; a.k.a. Group of Supporters of the Salafiste Trend; a.k.a. Group of Supporters of the Salafist Trend);

Eastern Turkistan Islamic Movement
(a.k.a. Eastern Turkistan Islamic Party, a.k.a. ETIM, a.k.a. ETIP);

International Sikh Youth Federation;

Moroccan Islamic Combatant Group
(a.k.a. GICM; a.k.a. Groupe Islamique Combattant Marocain);

The Islamic International Brigade
(a.k.a. International Battalion, a.k.a. Islamic Peacekeeping International Brigade, a.k.a. Peacekeeping Battalion, a.k.a. The International Brigade, a.k.a. The Islamic Peacekeeping Army, a.k.a. The Islamic Peacekeeping Brigade);

The Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs
(a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion, a.k.a. Riyadh-as-Saliheen, a.k.a. the Sabotage and Military Surveillance Group of the Riyadh al-Salihin Martyrs, a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Shahids (Martyrs));

The Special Purpose Islamic Regiment
(a.k.a. the Islamic Special Purpose Regiment, a.k.a. the al-Jihad-Fisi-Sabililah Special Islamic Regiment, a.k.a. Islamic Regiment of Special Meaning);

Tunisian Combat Group
(a.k.a. GCT, a.k.a. Groupe Combattant Tunisien, a.k.a. Jama'a Combattante Tunisien, a.k.a. JCT; a.k.a. Tunisian Combatant Group).

Acting under the authority of section 212(a)(3)(B)(vi)(II) of the INA, and in consultation with the Attorney General and the Secretary of Homeland Security, I hereby determine that the following names have been used by two organizations that are already on the Terrorist Exclusion List, and amend the designations of those organizations under that section to add the following names as aliases:

—Wafa Humanitarian Organization, Al Wafa, Al Wafa Organization (as aliases for Al-Wafa al-Igatha al-Islamia).

—Waldenberg, AG (as an alias for Al Taqwa Trade, Property, and Industry Company, Ltd.).

This notice shall be published in the **Federal Register**, and is effective upon publication.

Dated: April 22, 2004.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–9725 Filed 4–28–04; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

Millennium Challenge Corporation

[Public Notice 4698; 5 U.S.C. 552b(e); FR 04–04]

Notice of May 6, 2004, Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

Time and Date: 9–11 a.m., May 6, 2004.

Place: Department of State, C Street Entrance, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Shirley Puchalski at (703) 875–7337.

Status: Meeting will be open to the public from 9 a.m. until conclusion of the administrative session; a closed session will commence immediately following the conclusion of the open session, at approximately 9:20 a.m.

Matters To Be Considered: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a quarterly meeting of the Board to consider the selection of countries that will be eligible for Millennium Challenge Account assistance in FY2004 under the Millennium Challenge Act of 2003 (Pub.

L. 108–199 (Division D)) and certain administrative matters. The majority of the meeting will be devoted to a discussion of candidate countries, which is expected to involve the consideration of classified information and will be closed to the public. A brief open session relating to certain administrative matters and an update for the Board on MCC operations will precede the closed session.

Due to security requirements at the meeting location, all individuals wishing to attend the open portion of the meeting must notify Ghadah Sabbagh at (202) 647–6286 (*sabbaghgb@state.gov*) of their intention to attend the meeting by noon on Tuesday, May 4, 2004, and must comply with all relevant security requirements of the Department of State, including providing the necessary information to obtain any required clearance. Seating for the brief open session will be available on a first come, first served basis.

Dated: April 27, 2004.

Alan Larson,

Interim Chief Executive Officer, Millennium Challenge Corporation, Department of State.

[FR Doc. 04–9842 Filed 4–27–04; 1:38 pm]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4664]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 10, 2004, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, and a review of the Council's meeting schedule.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 1, 2004. Each visitor will be asked to provide his/her date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: April 23, 2004.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 04–9724 Filed 4–28–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, the are not repeated here. Request of modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" demote a modification request. There applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before May 14, 2004.

ADDRESS COMMENTS TO: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 22, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
8178–M		National Aeronautics and Space Administration, Houston, TX.	49 CFR 173.302(a); 173.301(f); 175.3.	8178	To modify the exemption to authorize the use of alternative CRES 301 stainless steel cylinders and extending the service life of the steel cylinders to 32 years from date of manufacture for the transportation of Division 2.2 materials.
10751–M		Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848; 177.823; 177.835(c)(3).		To modify the exemption to authorize in increased capacity of the aluminum chassis-mounted saddle fuel tank from 150 to 300 gallons.
1149–M		ARC Automotive, Inc., (formerly Atlantic Research Corporation), Knoxville, TN.	49 CFR 173.301(h); 173.302; 173.306(d)(3).	11494	To modify the exemption to authorize an increase in maximum service pressure from 4,000 psig to 8,000 psig of the non-DOT specification cylinders.
12065–M	RSPA–98–3831	International Flavors and Fragrances, Inc., Shrewsbury, NJ.	49 CFR 173.120(c)(ii)	12065	To modify the exemption to authorize the transportation of additional Class 3 materials with flash points determined by the Grabner MiniFlash Flashpoint Analyzer.
12561–M	RSPA–00–8305	Rhodia Inc., Cranbury, NJ.	49 CFR 172.203(a); 173.24b; 179.13.	12561	To modify the exemption to authorize the use of 100 additional the use of 100 additional DOT Specification tank cars having a maximum gross weight on rail of 286,000
13310–M		Amvac Chemical Corporation, Los Angeles, CA.	49 CFR 178.3; 178.503.	13310	To reissue the exemption originally issued on an emergency basis for the transportation of certain UN standard bags that were incorrectly printed with a specification marking that does not include the "UN" symbol.
13350–M		The Boeing Company, Cape Canaveral, FL.	49 CFR 173.201	13350	To reissue the exemption originally issued on an emergency basis for the transportation of four Space Shuttle Orbiter Auxiliary Power Units containing the residue of a Class 8 material.
13355–M	RSPA–04–17039.	C L Smith Co., Saint Louis, MO.	49 CFR 173.13(a); 173.13(b); 173.13(c)(1)(ii); 173.13(c)(1)(iv); 173.13(c)(2)(iii);	13355	To reissue the exemption originally issued on an emergency basis for the use of specially designed combination packagings for the transportation of various hazardous materials without hazard labels or placards.

[FR Doc. 04–9557 Filed 4–28–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34462]

MVC Transportation, LLC—Acquisition Exemption—P&LE Properties, Inc.

MVC Transportation, LLC (MVC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 15 miles of rail lines located in Allegheny County, PA, from P&LE Properties, Inc. (P&LE). These rail lines, which consist of the track facilities of the former Pittsburgh and Lake Erie Railroad Company's Mckees Rocks Yard, do not have assigned mile posts and extend along and adjacent to the CSX Transportation, Inc. (CSXT) main line in McKees Rocks, PA.[1] The portions of the lines that receive service are currently served by CSXT.

MVC certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

MVC states that the parties intended to consummate the transaction on or after April 15, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34462, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Laurence A. Neish, 651 Holiday Drive, Pittsburgh, PA 15220.

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov.*

Decided: April 21, 2004.

[1] On April 22, 1997, pursuant to a Bankruptcy Court order in *In Re: Pittsburgh & Lake Erie Properties, Inc.*, Case No. 96–406 (MFW) Chapter 11, P&LE sold the McKees Rocks Yard property to Allegheny Railroad Properties, Inc. (ARC) and accepted a cognovit judgment note and mortgage on the McKees Rocks Yard property from ARC. P&LE's Vice President and Treasurer, John D. Hartman, claims that P&LE retained ownership of the property because ARC did not fully pay for the property pursuant to the parties' agreement. MVC also believes P&LE retained its right, title, and property interest in the McKees Rocks Yard. After ARC defaulted on its payment obligations to P&LE, the ARC note and mortgage was acquired and satisfied by Mariah Venture Capital & Consulting, Co. (Mariah) with approval of the Bankruptcy Court by order dated June 18, 1999. With the consent of P&LE, Mariah will assign the ARC note and mortgage to MVC, which, in lieu of execution and foreclosure, will by deed and bill of sale from P&LE take title to the rail yard facilities subsequent to the effective date of this acquisition exemption.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9607 Filed 4–28–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5100.1, titled "Signing Authority for Corporate Officials."

DATES: We must receive your written comments on or before June 28, 2004.

ADDRESSES: You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Title: Signing Authority for Corporate Officials.

OMB Number: 1513–0036.

TTB Form Number: 5100.1.

Abstract: TTB F 5100.1 is substituted instead of a regulatory requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or office to sign for the corporation in TTB matters. The form identifies the corporation, the individual or office authorized to sign, and documents the authorization.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 250.

Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: April 19, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–9707 Filed 4–28–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5110.28 and Recordkeeping Requirement 5110/03, titled "Distilled Spirits Plant Monthly Report of Processing Operations."

DATES: We must receive your written comments on or before June 28, 2004.

ADDRESSES: You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant Monthly Report of Processing Operations.

OMB Number: 1513–0041.

TTB Form and Recordkeeping Requirement Numbers: TTB F 5110.28 and TTB REC 5110/03.

Abstract: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for efficient allocation of personnel resources, and the compilation of statistics.

Current Actions: There are no changes to the information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 134.

Estimated Total Annual Burden Hours: 3,886.

Request for Comments

Comments submitted in response to this notice will be included or

summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: April 19, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–9708 Filed 4–28–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5630.5R, titled "Special Tax Renewal Registration and Return," and TTB Form 5630.5RC, titled "Special Tax Location Registration Listing."

DATES: We must receive your written comments on or before June 28, 2004.

ADDRESSES: You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Titles: Special Tax Renewal Registration and Return; and Special Tax Location Registration Listing.

OMB Number: 1513–0113.

TTB Form Numbers: 5630.5R and 5630.5RC.

Abstract: 26 U.S.C. Chapters 51, 52 and 53 authorize the collection of special taxes from persons engaging in certain businesses. TTB Forms 5630.5R and 5630.5RC are used to compute tax and as an application for registry.

Current Actions: There are no changes to the information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 350,000.

Estimated Total Annual Burden Hours: 100,500.

Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: April 19, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–9709 Filed 4–28–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Community Development Financial Institutions Program—Financial Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change of application deadline.

SUMMARY: On February 26, 2004, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Financial Assistance Component of the CDFI Program (69 FR 9018) that the deadline for applications for assistance through the Financial Assistance Component was 5 p.m. e.t. on April 28, 2004. This notice is to announce that the application deadline for the FY 2004 funding round of the Financial Assistance Component of the CDFI Program has been extended to 5 p.m. e.t. on April 30, 2004. This notice is to also announce that the Fund will respond to applicants' programmatic, reporting, compliance, information technology, administrative or disbursement phone calls or e-mail inquiries that are received on or before 5 p.m. e.t. on April 28, 2004 (2 days before the application deadline). The deadline for submission of original signatures, documentation from the Internal Revenue Service (IRS) confirming the applicant's Employer Identification Number, and all other required paper attachments has not changed. Original signatures, IRS documentation and paper attachments must be submitted not later than 5 p.m. e.t. on May 5, 2004. All other information and requirements set forth in the February 26, 2004, NOFA for the Financial Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have

questions regarding administrative requirements, contact the Fund's Grants Management and Compliance Manager. The Program Operations Manager and the Grants Management and Compliance Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: April 27, 2004.

Owen M. Jones,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 04–9841 Filed 4–28–04; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

9 a.m.: meeting opens.

12 noon: meeting adjourns.

The planned discussion topics are:

(1) Discussion with ETA Director.

(2) Transition of Modernized Applications.

(3) Operational Issues Facing e-Filing.

(4) Overview of Draft 2004 ETAAC Report to Congress.

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Tuesday, May 11, 2004. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held at the Hilton Garden Inn—Franklin Square, 815 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: To have your name put on the guest list and to receive a copy of the agenda or general information about ETAAC, please contact Kim Logan on 202–283–1947 or at *kim.a.logan@irs.gov* by May 6, 2004. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service's strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: April 22, 2004.

Jo Ann N. Bass,

Director, Strategic Services Division.

[FR Doc. 04–9738 Filed 4–28–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the annual meeting of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will be held on June 9–12, 2004, at the Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida. The meeting is open to the public.

The Committee, comprised of sixty-three national voluntary organizations, advises the Secretary on coordinating and promoting volunteer activities within VA facilities. The primary purposes of this meeting are: To provide an opportunity for the Committee's review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve Committee recommendations.

The meeting sessions are scheduled for 6 p.m. until 8 p.m. on June 9, 2004; 8:30 a.m. until 4:30 p.m. on June 10, 2004; 8:30 a.m. until 4:30 p.m. on June 11, 2004; and 7 a.m. until 1 p.m. on June 12, 2004, with a closing program at 6 p.m. that day. The June 9 session will involve opening ceremonies, remarks by several officials and a keynote address by the Secretary of Veterans Affairs. The June 10 session will feature a presentation on the VA Voluntary Service, a presentation on Care Coordination and four educational workshops on the good neighbor program, student volunteer program, target recruitment for 20–40 age groups, and corporate fundraising. On June 11, educational workshops will continue and keynote speaker Dr. Jonathan Perlin, Acting Under Secretary for Health, will address the business session. There will also be several awards recognizing exceptional volunteer service and the James Parke memorial Scholarship Luncheon. The June 12 session will include discussions on volunteer recruitment strategies, a closing business session, and will be followed by a closing ceremonies event in the evening.

Individuals interested in attending should contact: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8392.

Dated: April 16, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–9702 Filed 4–28–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
April 29, 2004

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 358
Standards of Conduct for Transmission Providers; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket Number RM01–10–001; Order No. 2004–A]

Standards of Conduct for Transmission Providers

Issued April 16, 2004.

AGENCY: Federal Energy Regulatory Commission, DoE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) generally reaffirms its determinations in Order No. 2004 and grants rehearing and clarifies certain provisions. Order No. 2004 requires all natural gas and public utility Transmission Providers to comply with Standards of Conduct that govern the relationship between the natural gas and public utility Transmission Providers and all of their Energy Affiliates.

In this order, the Commission addresses the requests for rehearing and/or clarification of Order No. 2004. The Commission grants rehearing, in part, denies rehearing, in part, and provides clarification of Order No. 2004. This order (1) clarifies the definition of Energy Affiliate; (2) further codifies the definition of "Marketing Affiliate;" (3) clarifies which Field and Maintenance employees a Transmission Provider may share with its Energy Affiliates; (4) clarifies that a Transmission Provider may share with its Energy Affiliates information necessary to maintain the operations of the transmission system; (5) codifies the exception that permits a Transmission Provider to share senior officers and directors with its Marketing and Energy Affiliates; (6) codifies the exception that permits a Transmission Provider to share the risk management function with its Marketing and Energy Affiliates; (7) codifies that a Transmission Provider may share information with certain employees it shares with its Marketing and Energy Affiliates; and (8) defers the implementation date to September 1, 2004.

DATES: *Effective Date:* Revisions in this order on rehearing will be effective June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Demetra Anas, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8178.

SUPPLEMENTARY INFORMATION:

Table of Contents

Order on Rehearing and Clarification

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. On November 25, 2003, the Federal Energy Regulatory Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule) [1] which added Part 358 and revised Parts 37 and 161 of the Commission's regulations.[2] The Commission adopted Standards of Conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers) that were subject to the former gas Standards of Conduct in Part 161 of the Commission's regulations or the former electric Standards of Conduct in Part 37 of the Commission's regulations.[3] Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. The Commission affirms here the legal and policy conclusions on which Order No. 2004 is based. The goal of the Standards of Conduct for Transmission Providers is to prevent undue discrimination. In this order, the Commission addresses the requests for rehearing and/or clarification of Order No. 2004. As discussed below, the Commission grants rehearing, in part, denies rehearing, in part, and provides clarification of Order No. 2004. This order (1) clarifies the definition of Energy Affiliate; (2) further codifies the definition of "Marketing Affiliate;" (3) clarifies which Field and Maintenance employees a Transmission Provider may share with its Energy Affiliates; (4) clarifies that a Transmission Provider may share with its Energy Affiliates information necessary to maintain the operations of the transmission system; (5) codifies the exception that permits a Transmission Provider to share senior officers and directors with its Marketing and Energy Affiliates; (6) codifies the exception that permits a Transmission Provider to share the risk management function with its Marketing and Energy Affiliates; (7) codifies that a Transmission Provider may share information with certain employees it shares with its Marketing and Energy Affiliates; and (8) defers the implementation date to September 1, 2004.

I. Background

2. Following issuance of Order No. 637,[4] the Commission hosted a public

[1] Standards of Conduct for Transmission Providers, 68 FR 69134 (Dec. 11, 2003), III FERC Stats. & Regs., ¶ 31,155 (Nov. 25, 2003).

[2] The Commission also made minor conforming changes in Parts 250 and 284.

[3] The gas standards of conduct were codified at Part 161 of the Commission's regulations, 18 CFR part 161 (2003), and the electric standards of conduct were codified at 18 CFR 37.4 (2003).

[4] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, Final Rule, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000

conference on March 15, 2001, to discuss how the changes in the natural gas market affect the way in which the Commission should regulate transactions between pipelines and their affiliates, capacity managers and agents. Industry representatives urged the Commission to: (1) Apply the standards of conduct to all affiliates; (2) prohibit affiliates from holding capacity on affiliated pipelines; (3) limit an affiliate's capacity market share; or (4) take no action vis-à-vis affiliate relationships. Several industry representatives expressed a fear of retaliation for filing a complaint or inadequate resources to pursue complaints that result only prospective remedies.[5] Commenters also expressed concern that regulated entities can transfer all the benefits of their regulated (monopolistic) status to their unregulated affiliates, which can then use these benefits to reap unregulated profits from the public.[6]

3. On September 27, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[7] Following review of the comments, in April 2002, the Commission published an "Analysis of the Major Issues Raised in the Comments" (Major Issues Analysis). At the request of commenters, the Commission also hosted a full-day technical conference in May 2002 giving interested persons the opportunity to discuss issues raised in the NOPR and the Major Issues Analysis. Panelists, interested persons and Commission staff discussed a variety of issues including: the impact of requiring the independent functioning between Transmission Providers and their Energy Affiliates; whether there were other ways to prevent discriminatory behavior; information disclosure issues; and proposed revisions to regulatory text and the definition of Energy Affiliate. About 100 interested persons submitted additional comments and/or draft regulatory text. On November 25, 2003, the Commission issued Order No. 2004, which became effective on February 9, 2004. Sixty-eight requests for rehearing and clarification and comments have been filed.[8]

II. Need for the Rule

Final Rule

4. The Final Rule identified a number of changes in the energy, natural gas, power and transmission markets that supported the need for enhancing the Standards of Conduct, including, but not limited to, open-access transmission, unbundling, changing commodity markets, increased mergers, convergence of gas and electric industries, asset management, electronic commodity trading and an increase in power marketers or entities with market-based rate authority. The gas industry also experienced consolidations in every sector—pipelines, producers, marketers and local distribution companies (LDCs)/utilities.

5. The Commission noted that a Transmission Provider could transfer its market power to its affiliated businesses because the former standards of conduct did not cover all affiliate relationships. Non-marketing affiliates of Transmission Providers compete against non-affiliates for transmission services, in capacity release transactions, in commodity and futures markets, in power sales, and in siting new generation. In addition, in the natural gas industry, non-marketing affiliates of interstate natural gas pipelines, such as asset managers, control large amounts of capacity on their affiliated pipelines, yet they were not covered by the former standards of conduct because they do not actually hold pipeline capacity. Non-marketing affiliates can also abuse preferential access to information about the Transmission Provider either as shippers or traders in the transmission or commodity marketplace.

6. The Standards of Conduct under former parts 37 and 161 did not address the sharing of information by Transmission Providers with Energy Affiliates. The Final Rule found that the preferential sharing of information between Transmission Providers and Energy Affiliates undermines and frustrates the efforts of independent businesses to buy, sell, build, grow and provide competitive alternatives. The Commission was concerned, for example, that an interstate natural gas pipeline could inform its affiliated asset manager about a proposed pipeline expansion or upcoming curtailment before the Transmission Provider revealed that information to the asset manager's competition. The Commission stated that Transmission Providers' unduly preferential behavior towards their Energy Affiliates violates the statutory prohibitions against undue discrimination or preferences in the provision of interstate transmission services,[9] and adopted the regulations in Final Rule to prevent such violations.

7. Given the need to maintain the reliability of the electric transmission and natural gas pipeline systems throughout the United States, the Commission noted that the Final Rule does not obstruct the free flow of information from any affiliated or non-affiliated customer to the transmission system operator. The Final Rule did not limit the ability of transmission system operators or pipeline system operators to work together with each other and affiliated or non-affiliated customers to reserve and schedule transmission or pipeline capacity usage on a non-discriminatory basis, nor did it limit the ability of system operators to issue any and all service-related directives to any customer, as necessary. And, during system emergencies, the Final Rule relaxed limitations on the flow of transmission information from the Transmission Provider to its Marketing or Energy Affiliates to facilitate any necessary reliability-related communications.

8. Many petitioners support the Final Rule and state that it is necessary. For example, Dominion states that the new regulations appropriately addressed changes in the industry and appropriately balanced the potential misuse of a Transmission Provider's market power against losing efficiencies of integrated operations. NiSource called Order No. 2004 a "substantial improvement" over the NOPR. Similarly APGA, APPA, CAPP, IPAA, IOGA-WV, NASUCA, NGSA, PGC and Transmission Dependent Utilities Systems welcomed the Final Rule and urged the Commission to refrain from taking any action that would diminish this important initiative. They claim that their silence on rehearing reflects satisfaction with the direction of Order No. 2004. NASUCA states that the reason there have been very few

¶ 31,091 (Feb. 9, 2000), Order No. 637–A, *order on reh'g*, 65 FR 35705 (June 5, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,099 (May 19, 2000).

[5] *See, e.g.*, January 5, 2001 comments of Dynegy, Inc. and National Association of State Utility Consumer Advocates in PL00–1–000.

[6] *See, e.g.*, January 5, 2001 comments of Dynegy, Inc. and Amoco Production Company and BP Energy in PL00–1–000.

[7] Standards of Conduct for Transmission Providers, 66 FR 50919 (Oct. 5, 2001), IV FERC Stats. & Regs. ¶ 32,555 (Sept. 27, 2001).

[8] Appendix A contains a list of each person that requested rehearing or clarification of Order No. 2004 or submitted additional comments regarding Order No. 2004. The abbreviations for the participants are identified in Appendix A.

[9] Sections 4 and 5 of the Natural Gas Act (NGA), 15 U.S.C. 717c and 717e (2000), state that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. Similarly, under sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d and 824e (2000), no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction.

complaints about anti-competitive behavior favoring affiliates other than Marketing Affiliates is because such behavior would not have violated the former standards of conduct.

Requests for Rehearing and/or Clarification and Commission Conclusions

9. El Paso, INGAA, Questar and Williams argue on rehearing that the Final Rule is overbroad and unsupported by substantial evidence. INGAA also argues that the industry changes cited by the Commission have been pro-competitive and do not justify the rule. Further, INGAA claims that the new services described in the Final Rule, such as capacity release, e-commerce and asset management are not new phenomena.

10. The Commission finds that the Final Rule is needed. The FPA and NGA require the Commission to prevent unduly discriminatory transmission service. For the Commission to meet that goal, the Standards of Conduct must guide the relationships between Transmission Providers and their affiliates that would use transmission information to compete unfairly with non-affiliates. As the identity of affiliates that engage in such competition has changed over time, the Standards of Conduct have had to change as well. Thus, the former standards of conduct focused on preventing the Transmission Provider from giving its merchant affiliate undue preferences by restricting the behavior between the Transmission Provider and its marketing affiliate or wholesale merchant function or affiliated power marketer.[10] The 1988 natural gas Standards of Conduct in Order No. 497[11] reflected market changes in the natural gas industry during the last half of the 1980s, as the natural gas industry reacted to natural gas wellhead price decontrol, long-term contract reformation, and open-access transportation. The 1996 electric Standards of Conduct in Order No. 889[12] were a companion to Order No. 888, which required public utilities to offer open access transmission service.

11. For example, Transmission Providers have economic incentives to unduly prefer agents or asset managers. Specifically, the introduction of a natural gas futures market by NYMEX in 1990, and the evolution of the use of these financial markets to hedge has prompted customers to use agents or asset managers to manage price risk. This allows those affiliates to aggregate, manage and control significant volumes of interstate pipeline capacity.

12. In the past, agency arrangements have been abused. For example, when Transcontinental Gas Pipeline Company authorized Williams Energy Marketing and Trading (WEM&T), its marketing affiliate, to act as agent for its merchant functions sales, it also gave WEM&T access to its nonaffiliated customers' contract data, invoice data, and transportation data. That information was not made available to non-affiliated customers.[13] Agency agreements were also a factor in the violations where an affiliated power marketer was acting as agent for Cleco Power LLC (Cleco) and its affiliated electric wholesale generators (EWGs). Through the agency agreements, the affiliated power marketer performed for Cleco and its affiliated EWGs a variety of services, including: resource coordination, commodity trading, retail and wholesale marketing, monitoring energy management, transmission scheduling services, optimizing the use of transmission paths to decrease transmission needed from outside the control area and market test power. Because the agency agreements empowered the affiliated power marketer, it had superior access to customer and transmission information, and shared employees with the Transmission Provider.[14]

13. The guidance provided by the Final Rule will compel Transmission Providers to provide no more information to affiliated agents and asset managers than the Transmission Providers provide to non-affiliates. Such requirements need to be spelled out in the Standards of Conduct to give Transmission Providers a clear understanding of their obligations to provide non-discriminatory service, as required by the NGA and the FPA.

14. The Final Rule also properly takes into account the convergence of the gas and electric industries.[15] Over the past decade, newly constructed electric generation has chosen natural gas as the fuel of choice. Mergers of electric utilities with natural gas companies have created corporate families with business activities across both industries.[16] Transmission Providers have economic incentives to favor any affiliate that is involved in transmission on their systems, not only those that directly market natural gas or power. Indeed, in some regions, notably California and the Northeast, the interdependence of natural gas and wholesale electric markets has raised concerns about reliability and prices of converging supply and demand forces

[10] Many marketing affiliates were originally created to help interstate natural gas pipelines that had historically offered bundled sales and transportation services, move towards transportation-only services, and sell gas supply committed under long-term take-or-pay contracts.

[11] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (June 1, 1988); Order No. 497–A, order on *reh'g*, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (Feb. 10, 1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (DC Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497–E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497–F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,996 (June 17, 1994). *See also* Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on reh'g*, 59 FR 52896 (Oct. 20, 1994), 69 FERC ¶ 61,044 (Oct. 14, 1994); Order No. 566–B, *order on reh'g*, 59 FR 65707 (Dec. 21, 1994), 69 FERC ¶ 61,334 (Dec. 14, 1994); and Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (Aug. 12, 1998), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,064 (July 30, 1998).

[12] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, reh'g denied, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,253 (Nov. 25, 1997). *See also* Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,036 (Apr. 24, 1996) at 31,692; *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997); order on reh'g, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom., Transmission Access Policy Study Group* v. *FERC, 225 F.3d 667* (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00–568 (in part) and 00–809), *cert. denied* (No. 00–800) (U.S. Feb. 26, 2001).

[13] Transcontinental Gas Pipe Line Corporation, *et al.*, 102 FERC ¶ 61,302 (2003).

[14] Cleco Corp., 104 FERC ¶ 61,125 (2003).

[15] Final Rule at P 8.

[16] For example, NiSource, Inc. merged with Columbia Energy Group, Dominion Resources, Inc. merged with Consolidated Natural Gas Company, Duke Energy merged with the Coastal Companies, and Enron Corporation merged with Portland General Electric.

in the two industries.[17] As a result, the Standards of Conduct properly apply to Energy Affiliates across industries. INGAA argues that there is no harm to the market from Transmission Providers' interaction with their Energy Affiliates, particularly with natural gas producers, gas processors, gatherers and intrastate pipelines. The Commission disagrees.

15. For example, under the Final Rule, producer affiliates are Energy Affiliates, which reflects their significant control over pipeline capacity. Historically, in the late 1980s, producers and producer affiliates held very little capacity on natural gas Transmission Providers. But, as the role of marketers in the industry has decreased, producers have increased significantly the amount of capacity they hold on interstate natural gas pipelines. In 1998, only three producers were among the top 20 marketers.[18] However, by the fourth quarter of 2003, 14 of the top 20 marketers were producers.[19] Of the 14 producer/marketers, nine of them are affiliated with natural gas Transmission Providers.

16. Contrary to INGAA's argument, the Commission need not wait until there have been many adjudicated cases of unduly discriminatory conduct between producers or asset managers, on the one hand, and their affiliated Transmission Providers on the other hand before the Commission can issue Standards of Conduct that prevent them from straying into violations. The economic incentives for Transmission Providers to favor their Energy Affiliates are real.

17. While the Commission's actions have encouraged competition, competition has not eliminated the economic incentives that encourage a Transmission Provider to give its affiliates unduly preferential treatment. Rather, the evolution of wholesale energy markets has created new commercial methods of doing business, and along with them, new opportunities for Transmission Provider affiliates to profit from unduly preferential information or transmission access. Given the increased competition, a Transmission Provider may have more incentive to give its affiliate preferential service or preferential access to information to benefit the corporate family. Moreover, those who operate the transmission infrastructure continue to face limited competition and in most parts of the country, continue to hold significant market power. Now the Commission is concerned that Transmission Providers may be giving Energy Affiliates other than Marketing Affiliates unduly preferential treatment.

18. Unduly preferential behavior can and does harm customers. Although harm to the market is difficult to quantify,[20] the Commission has been able to quantify harm resulting from unduly preferential treatment in some cases. For example, Idaho Power Company gave its marketing affiliate unduly preferential access to its transmission system by treating the marketing affiliate's transmission requests as if the service was needed for native load. This unduly preferential behavior in favor of Idaho Power Company's merchant affiliate harmed the retail customers of Idaho in the amount of $5.8 million.[21] In another example, the retail customers of Louisiana were harmed approximately $2.1 million when Cleco Power favored its affiliates.[22] The Commission is ensuring that Transmission Providers do not give their Energy Affiliates similar unduly preferential treatment.

19. INGAA and the New York State Department also argue that the Commission failed to adequately consider the costs of compliance and did not conduct an extensive cost-benefit analysis. Contrary to these assertions, the Commission did consider the costs of compliance, and revised some of the proposals originally included in the NOPR, in part, to appropriately balance the costs of complying with the Standards of Conduct. The Commission reduced the costs of compliance by permitting integrated activities wherever possible without compromising the goals of the Final Rule. For example, the Commission permitted Transmission Providers and their Marketing and Energy Affiliates to share field and maintenance employees and support employees with appropriate safeguards. The Commission also permitted Transmission Providers and their Marketing and Energy Affiliates to share computer systems, Energy Management System (EMS) and Supervisory Control and Data Acquisition (SCADA) as long as transmission and customer information itself is not shared.

20. The Commission has given interested persons the opportunity to identify their estimated costs to comply with the Standards of Conduct. Transmission Providers claimed that it would cost them between $75,000 to $300 million to comply with the Standards of Conduct as originally proposed in the NOPR.[23] The Commission also encouraged Transmission Providers to submit estimates of costs in the Notice soliciting comments after the May 21, 2002 Conference,[24] and the Final Rule encouraged Transmission Providers to include in their Informational Filings estimates of the costs associated with complying with the Final Rule. A review of comments and Informational Filings confirms that changes incorporated in the Final Rule have decreased the Transmission Providers' costs of complying with the Standards of Conduct.[25] For example, Cinergy, which originally anticipated annual costs of $36,000,000-$39,000,000,[26] now estimates its annual costs at approximately $225,000.[27] Similarly, Alliance, which originally anticipated one-time compliance costs of $20-$30

[17] *See e.g.*, "New England Maintains Deliveries Despite Record Demand, Bitter Cold," Natural Gas Intelligence, January 19, 2004, p. 1.

[18] Inside F.E.R.C. Gas Market Report, June 25, 1999, p. 12.

[19] There are no Marketing Affiliates in the list of the top 20 marketers for the fourth quarter of 2003. Gas Daily, March 23, 2004, p. 6.

[20] For example, the Commission could not quantify the harm when the Public Service Company of New Mexico failed to comply with the independent functioning requirement of the standards of conduct; when Ameren Corporation's transmission employees engaged in non-public, off-OASIS communications with wholesale merchant function employees and other customers; or when PacifiCorp allowed its wholesale merchant function employees to participate in bi-weekly meetings with transmission employees regarding reliability. See April 25, 2000 Letter from John Delaware, Deputy Director and Chief Accountant, to Public Service Company of New Mexico in Docket No. FA99–9–000; September 27, 2002 Letter from John Delaware, Deputy Director and Chief Accountant to Ameren Corporation in Docket Nos. FA01–5–000, FA01–6–000 and FA01–7–000; See December 18, 2003 Letter from William Hederman, Director of the Office of Market Oversight and Investigations, to PacifiCorp in Docket No. PA04–5–000.

[21] Idaho Power Co., IDACORP Energy, L.P., and IDACORP, Inc., 103 FERC ¶ 61,182 (2003).

[22] Cleco Corp., 104 FERC ¶ 61,125 (2003).

[23] Major Issues Analysis at pp. 13–15 and Final Rule at P 114.

[24] April 25, 2002 Notice of Staff Conference in Docket No. RM01–10–000.

[25] Review of the Transmission Providers' Informational Filings in their respective "TS" dockets reveals the following estimated costs to comply with the Standards of Conduct: (a) 5 Transmission Providers stated that the costs would be "minimal," but did not give dollar figures; (b) 27 Transmission Providers stated it would cost them less than $50,000; (c) 29 Transmission Providers stated it would cost them between $50,000–$100,000; (d) 69 Transmission Providers stated it would cost them between $100,000–$500,000; (e) 11 Transmission Providers stated it would cost them between $500,000–$1,000,000; and (f) 12 Transmission Providers stated it would cost them more than $1,000,000. These include Questar Pipeline, which alone claimed higher costs from the Final Rule than from the NOPR.

[26] June 2, 2002 Supplemental Comments of Cinergy Services, Inc. in Docket No. RM01–10–000.

[27] February 9, 2004 Informational Filing by Cinergy Services, Inc. in Docket No. TS04–43–000.

million,[28] now estimates its compliance cost at $250,000.[29] Finally, Kinder Morgan Pipelines, which originally anticipated an increase of $22,600,000 annually and $5.8 million in a one-time cost to comply,[30] now estimates that it will cost approximately $200,000 for all four Kinder Morgan Pipelines if their rehearing requests are granted and $400,000-$500,000 if their rehearing requests are denied.[31] As discussed in the NOPR, the Major Issues Analysis and the Final Rule, the Commission has considered the costs of compliance with the revised Standards of Conduct, and finds, on balance, that the costs are reasonable to achieve the Commission's goal of preventing unduly discriminatory behavior in a competitive market. Further, clarifications made in this order will further reduce some of the compliance costs.

21. INGAA also challenges the Commission's review and analysis of the Index of Customers data[32] listed in the Final Rule.[33] These data identify the amount of capacity affiliates held on their affiliated gas pipelines. INGAA argues that the Commission should have calculated the total amount of the capacity held by affiliates compared to the total amount of pipeline capacity on an aggregate basis, rather than calculating the percentage of capacity held by an affiliate on its affiliated Transmission Provider. INGAA also use a volume-weighted average, rather than a simple average.

22. Evaluating the amount of capacity held by an affiliate on its affiliated Transmission Provider is a more accurate indication of the natural gas Transmission Provider's incentives to give its affiliate an undue preference. In some instances, a volume-weighted average minimizes the apparent incentives of Transmission Providers to favor their Energy Affiliates.[34] And the impact of Energy Affiliates other than Marketing Affiliates is pronounced. Producers' roles have evolved and, now, Gas Daily reported that producers have solidified their hold on marketer rankings as traditional marketers have vanished.[35]

23. Consideration of INGAA's concerns caused the Commission to look closer at the shipper data from the October 2003 Index of Customers information. The Commission found that of 87 pipelines examined, 58 had contracts with their affiliates for firm transportation, firm storage or both types of services. Of the 18 pipelines with LDC affiliate contracts, the affiliated LDCs held about 46 percent of the contracted capacity on those 18 pipelines and 48 percent of the pipelines' contracted storage capacity.[36] On nine of these 18 pipelines, LDC affiliates held in excess of 50 percent of the contracted firm transmission capacity. Of the 16 natural gas pipelines affiliated with natural gas producers, producer affiliates held about 37 percent of the firm transportation capacity.[37] On six of these pipelines, producer affiliates held more than 60 percent of the firm transportation capacity. These data paint a very different picture than the aggregate, volume-weighted data produced by INGAA. The Commission's analysis more accurately reflects the relationship between an individual Transmission Provider and its Marketing or Energy Affiliates.

24. Moreover, the Index of Customer data does not always identify the level of an affiliate's involvement, either as an asset manager or agent or as a replacement shipper. For example, review of Texas Eastern Transmission Company's Capacity Release information from January 1, 2002 through July 31, 2003, shows that Duke Energy Trading Company, an affiliated marketer, released capacity to Energy Plus, another marketing affiliate, on 141 occasions and Energy Plus released capacity to Duke Energy Trading Company on 47 occasions, yet a comparable review of Texas Eastern's Index of Customers does not identify Energy Plus as an affiliate holding firm pipeline capacity.

25. BP argues that the Final Rule did not impose sufficient restrictions or prohibitions on Transmission Providers. Specifically, BP argues that the Commission should have adopted pipeline allocation procedures for affiliates holding capacity on affiliated gas pipeline Transmission Providers. The Commission denies rehearing. While the Commission considered additional measures, such as those recommended by BP, it decided not to adopt them on a generic basis. However, the Commission will consider additional remedies on a case-by-case basis if a Transmission Provider violates the Standards of Conduct.

III. Analysis of Requests for Rehearing and/or Clarification

26. The Commission has received many requests for rehearing or clarification with alternative requests for waiver, partial waiver or exemption with respect to individual Transmission Providers' specific circumstances. Many petitioners also filed requests for waiver, partial waiver or exemption in their individual "TS" filings on the same issues.[38] The Commission will address the individual requests for exemption, waiver or partial waiver in orders in the individual "TS" filings, and in this order will address the generic issues.

A. Applicability of the Standards of Conduct

Final Rule

27. Pursuant to §§ 358.1(a), (b) and (c), the Standards of Conduct apply to Transmission Providers, but not to Commission-approved Independent System Operators (ISOs) or Regional Transmission Organizations (RTOs). Section 358.1(c) also provides that a public utility transmission owner that participates in a Commission-approved

[28] June 14, 2002 Post-Technical Conference Comments of Alliance Pipeline L.P. in Docket No. RM01–10–000.

[29] February 9, 2004 Informational Filing of Alliance Pipeline L.P. in Docket No. TS04–84–000.

[30] June 28, 2002 Comments of Kinder Morgan, Inc. in Docket No. RM01–10–000.

[31] February 9, 2004 Informational Filing of Kinder Morgan Interstate Gas Transmission, L.L.C in Docket No. TS04–88–000.

[32] Although INGAA also urges the Commission to publish its analysis of the Index of Customers data, it was able to duplicate the Commission's calculations and make its own calculations and analysis from the publicly available information in the October 2003 Index of Customers. At INGAA's urging, the Commission is attaching its updated analysis to the Order on Rehearing.

[33] Final Rule at P 10 and 67.

[34] For example, under INGAA's analysis using a volume-weighted calculation, production affiliates held only 1.6 percent of the capacity on all 87 gas Transmission Providers. However, using a simple average calculation, 16 production affiliates held 37 percent of the capacity on their affiliate gas Transmission Providers with production affiliates.

[35] Gas Daily, "Producers solidify hold on marketer rankings," March 23, 2004.

[36] Carnegie Interstate Pipeline Company, CenterPoint Energy Gas Transmission, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Dominion Transmission, Inc., Eastern Shore Natural Gas Company, Equitrans, L.P., Granite State Gas Transmission Inc., Guardian Pipeline L.L.C., Kinder Morgan Interstate Gas Transmission Company, Mississippi River Transmission Corp., National Fuel Gas Supply Corp., Paiute Pipeline Company, Panhandle Eastern Pipeline Company, Questar Pipeline Company, Vector Pipeline, L.P., Westgas Interstate Inc., and Williston Basin Interstate Pipeline.

[37] CenterPoint Energy Gas Transmission, Chandeleur Pipe Line Company, Columbia Gas Transmission Corporation, Dauphin Island Gathering Partners, Destin Pipeline Company, L.L.C., Equitrans L.P., Garden Banks Gas Pipeline, L.L.C., Maritimes & Northeast Pipeline L.L.C., Mississippi Canyon Gas Pipeline, L.L.C., National Fuel Gas Supply Corporation, Northwest Pipeline Corporation, Nautilus Pipeline Company, L.L.C., Sabine Pipe Line L.L.C., TransColorado Gas Transmission Company, Venice Gathering System, L.L.C., and Wyoming Interstate Company, Ltd.

[38] On January 16, 2004, the Commission issued a notice that it had created the docket prefix "TS" or Transmission Standards for all Informational Filings and requests for waiver or exemption under Order No. 2004.

RTO or ISO and does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by § 358.5(b) may request an exemption from the Standards of Conduct.[39] The Final Rule also states that the Standards of Conduct also apply to non-public utility Transmission Providers[40] through the reciprocity provisions of Order No. 888.[41] Generation and transmission cooperatives (G&T) are not subject to the Standards of Conduct consistent with the policies established under Order No. 888.[42]

28. In the Final Rule, the Commission continues the exemptions and partial waivers of the Standards of Conduct for the entities that previously received exemptions or partial waivers under Order No. 889 or Order No. 497, and states that Transmission Providers may request waivers or exemptions from all or some of the requirements of Part 358 for good cause. *See* 18 CFR 358.1(d).

[39] This approach, rather than a codified exemption, recognizes that:

If a Transmission Provider operates transmission facilities, regardless of whether it belongs to an RTO/ISO, it has the ability to provide an undue preference to an affiliate and has access to valuable transmission information. Unless the ISO or RTO has a control center and field employees dedicated to the operation and maintenance of all transmission facilities under its operation, a Transmission Provider may be responsible for the operation of the transmission assets (under the direction of the ISO or RTO) and, more importantly, have direct access to transmission information. Participation in an ISO or RTO does not necessarily prevent a Transmission Provider from sharing information with its affiliates preferentially or preferentially operating facilities for the benefit of its Energy Affiliates.

Final Rule at P 20. No petitioner sought rehearing on this point.

[40] *See* Final Rule at P 28.

[41] Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, FERC Stats. & Regs., Regulations Preambles July 1996–Dec. 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Group, et al.* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York, et al.* v. *FERC*, 535 U.S. 1 (2002).

[42] Order No. 888–A, FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,048 at 30,366. In Order No. 888–A, the Commission clarified that if a distribution cooperative sought open access transmission service from a Transmission Provider, only the distribution cooperative (not its member distribution cooperatives) would be required to offer transmission service. The Commission excluded from the definition of affiliate distribution cooperative members of a generation and transmission cooperative.

Requests for Rehearing and/or Clarification and Commission Conclusions

29. BP requests clarification that the Commission will grant exemptions only for good cause. The Commission grants the request for clarification. As discussed in the Final Rule, the Commission will review the merits of each exemption request to determine whether a Transmission Provider qualifies for a full or partial waiver of the Standards of Conduct. *See* Final Rule at P 27.

30. USG and B–R request rehearing of the Commission's decision not to categorically exempt small pipelines, for example, those less than 25 miles long, with limited operations that serve one or a few affiliated and/or non-affiliated customers. The Commission grants rehearing. The Commission will exempt small pipelines, based on the size of the company, the number of employees and level of interest in transportation on the pipeline, and where appropriate, whether the company has separated to the maximum extent practicable from its Marketing or Energy Affiliates. These are the criteria the Commission used in determining whether small pipelines qualified for partial exemptions from the requirements of Order No. 497.[43]

31. Applying these criteria to the circumstances on USG and B–R, the Commission finds that partial exemptions are appropriate. The information in B–R's request for exemption in Docket No. TS04–183–000 indicates that B–R is 17-mile pipeline, is managed by U.S. Gypsum (its affiliate) and does not have any employees, is a free-flow, delivery only pipeline that is not interconnected with any other pipeline. Similarly, the information in USG's request for exemption in Docket No. TS04–103–000 indicates that USG is a 13-mile pipeline, is also managed by U.S. Gypsum and does not have any employees, is a free-flow, delivery only pipeline that is not interconnected with any other pipeline. USG and B–R are exempt from the Independent Functioning requirements of § 358.4 and the information disclosure prohibitions in § 358.5(a) and (b). They are not exempt from the remainder of the Standards of Conduct.

32. WPSC and UPPC request clarification that Order No. 2004 does not prohibit a future request for an exemption from the Standards of Conduct. The Commission so clarifies. Order No. 2004 does not limit the time for filing requests for exemptions or waivers.

[43] *See e.g.*, Ringwood Gathering Company, 55 FERC ¶ 61,300 (1991), Caprock Pipeline Company, *et al.*, 58 FERC ¶ 61,141 (1992).

B. Definition of a Transmission Provider

Final Rule

33. Section 358.3(a) defines a Transmission Provider as: "(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or (2) Any interstate natural gas pipeline that transports gas for others pursuant to Subpart A of Part 157 or Subparts B or G of Part 284 of this chapter."

34. The Final Rule codified two general principles concerning Transmission Providers' behavior. The first requires Transmission Providers' employees engaged in transmission system operations to function independently from the employees of the Transmission Providers' Marketing or Energy Affiliates. The second, in essence, the golden rule, is that a Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and cannot operate its transmission system to benefit preferentially a Marketing or Energy Affiliate. *See* Final Rule at P 30.

Requests for Rehearing and/or Clarification and Commission Conclusions

35. NASUCA requests reconsideration of the Commission's decision not to classify Hinshaw[44] or intrastate pipelines as Transmission Providers under the Standards of Conduct. NASUCA argues that section 311 of the Natural Gas Policy Act of 1978 (NGPA)[45] authorizes the Commission to condition the certificates that authorize these pipelines to engage in transmission transactions. NASUCA claims that intrastate pipelines have the same incentives to transfer market power to their Energy Affiliates as do other Transmission Providers. NASUCA argues that requiring the independent functioning of employees would limit the opportunities for intrastate pipelines to give preferential treatment to marketing affiliates that compete with non-affiliated shippers on intrastate pipelines. NASUCA claims that discriminatory intrastate transactions have the potential to distort wholesale

[44] Hinshaw pipelines are exempt from Commission regulation under the NGA, but they may have limited jurisdiction certificates to provide interstate transportation services like an intrastate pipeline under the Natural Gas Policy Act of 1978. *See* Order No. 63, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,118 (1980).

[45] 15 U.S.C. 3371 (2000).

markets, and may fall between the cracks of Federal and State regulation.

36. The Commission denies rehearing requested by NASUCA and will not classify intrastate and Hinshaws pipelines as Transmission Providers under the Standards of Conduct. As will be discussed further below, Hinshaws are State-regulated entities and are also frequently local distribution companies (LDCs). Not including Hinshaws in the definition of Transmission Provider is consistent with our treatment of LDCs. Both are regulated by States, which have jurisdiction to prevent undue discrimination on such facilities. Similarly, intrastate pipelines are regulated by the States and States may require them to observe separation of functions and non-disclosure requirements with respect to intrastate transactions. As discussed further below, both intrastate and Hinshaw pipelines may be classified as Energy Affiliates if they engage in Energy Affiliate activities described in § 358.3(d), and Transmission Providers subject to the Commission's jurisdiction must observe the separation of functions and disclosure requirements of the Standards of Conduct with respect to them. Consequently, no compelling purpose will be served by defining Hinshaws and intrastate pipelines as Transmission Providers.

37. WPSC and UPPC request clarification that ownership of a financial interest in transmission facilities, by an entity that does not directly own, operate or control transmission facilities does not make the entity a Transmission Provider.[46] The Commission clarifies that an entity that owns a financial interest in transmission facilities, but does not otherwise own, operate or control transmission facilities, is not a Transmission Provider, as defined. Although, owning a financial interest or controlling 10 percent or more of the voting interest[47] would make WPSC and UPPC an Affiliate of the Transmission Provider.

38. Encana argues on rehearing that Transmission Providers with no market power should be exempt from the requirements of Order No. 2004, particularly independent storage providers that are not interconnected with the facilities of affiliated pipelines. Encana argues that such storage providers cannot exercise market power, having: No market power (as found by Commission order); no exclusive franchise area; no captive ratepayers; no cost-of service; no guaranteed rate of return; no ability to cross-subsidize at-risk business with ratepayer contributions; and no affiliation with any Transmission Provider to which it interconnects.

39. The Commission grants Encana's request to generically exempt from the definition of Transmission Provider natural gas storage providers authorized to charge market-based rates that are not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, have no exclusive franchise area, no captive ratepayers and no market power. Such storage providers will be treated as Energy Affiliates if they are affiliated with any Transmission Providers.

40. NW Natural and Kelso Beaver request rehearing of the definition of Transmission Provider to the extent that it covers non-open access natural gas pipelines that transport gas for others solely under subpart A of part 157 of the Commission's regulations. These entities were not previously subject to the former standards of conduct, and petitioners argue that the original notice did not propose to expand the Standards of Conduct to cover entities that had not previously been subject to the rule. They also argue that the majority of pipelines certificated under part 157 are small and serve one or few customers.[48]

41. The Commission denies rehearing. Contrary to petitioners' assertion, the regulatory text in the NOPR gave notice that the Commission proposed that the Standards of Conduct would govern the behavior of natural gas pipelines providing transmission service under part 157 of the Commission's regulations.[49] Such pipelines may seek an exemption or waiver on a case-by-case basis.

C. Definition of an Energy Affiliate

Final Rule

42. The Final Rule defined Energy Affiliate in § 358.3(d) as an affiliate that:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An energy affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider; or

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets; or

(iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of natural gas or energy; or

(v) A state-regulated local distribution company that does not make any off-system sales.

i. Defining the Phrase "Engages in or Is Involved in Transmission Transactions"

Requests for Rehearing and/or Clarification and Commission Conclusions

43. INGAA, Cinergy, Dominion and Entergy urge the Commission to provide additional clarification on the meaning of § 358.3(d)(1) because the Commission did not define the meaning of the terms "engages in" or "is involved in." INGAA argues that those phrases do not sufficiently describe the activities that would make an Affiliate an Energy Affiliate.

44. The Commission grants petitioners' clarification request. The term "engages in" transmission transactions means the Affiliate holds (or is requesting) transmission capacity on a Transmission Provider as a shipper or customer or buys or sells transmission capacity in the secondary capacity market. When the Commission uses the phrase "involved in" it means acting as agent, asset manager, broker or in some fashion managing, controlling or aggregating capacity on behalf of transmission customers or shippers. Other transmission-related interactions between a Transmission Provider and its interconnected Affiliate, such as confirming nominations and schedules with upstream producers and gathering facilities, exchanging operational data

[46] Based on the pleading, it appears that WPSC and UPPC own financial interests in ATCLLC, a Transmission Provider, which is a transmission-owning member of Midwestern Independent System Operator (MISO), but they do not directly own any transmission facilities. WPSC's and UPPC's request to withdraw their previous standards of conduct under Order No. 889 is pending before the Commission in Docket No. TS04–130–000, and will be addressed in a separate order on the merits of the request.

[47] Control is defined at 18 CFR 358.3(c) and Affiliate is defined at 18 CFR 358.3(b).

[48] NW Natural and Kelso Beaver also filed a joint request for exemption in Docket No. TS04–2–000, which the Commission will address by separate order.

[49] FERC Stats. & Regs., Proposed Regulations 1999–2003 at 34,093.

relating to interconnection points, and communications relating to maintenance of interconnected facilities are not included in the definition of the terms "engaged in" or "involved in." This clarification has the practical effect of addressing many of the concerns raised by interconnected gatherers, processors or intrastate pipelines. The majority of gatherers, processors and intrastate pipelines do not participate in the activities described in § 358.3(d) and, thus, they will no longer be treated as Energy Affiliates. As discussed further below, this clarification will reduce the number of gatherers, processors, intrastate pipelines and Hinshaw pipelines that are Energy Affiliates under the rule.

ii. LDCs as Energy Affiliates

Requests for Rehearing and/or Clarification and Commission Conclusions

45. INGAA argues that the expanded definition of Energy Affiliate in Order No. 2004 applies to entities that are not subject to the Commission's jurisdiction. Similarly, New York State Department argues that the imposition of Standards of Conduct on LDCs' employees not engaged in sales for resale is an unlawful exercise of jurisdiction, contrary to section 1(c) of the NGA and section 201 of the FPA. New York State Department reads the Final Rule as subjecting the entire retail distribution unit to Federal regulation if the electric distribution unit sells excess energy through the New York Independent System Operator (NYISO).

46. The Commission disagrees with INGAA's and New York State Department's assertions that the Commission is attempting to exercise jurisdiction over non-jurisdictional activities. The Standards of Conduct are imposed only on Transmission Providers, not Marketing or Energy Affiliates. The Commission has very clear statutory mandates to ensure that interstate commerce in natural gas and electricity takes place at rates and terms and conditions of service that are just and reasonable and not unduly discriminatory or preferential.[50]

47. The Standards of Conduct apply to a Transmission Provider's relationship with an affiliated LDC (gas and/or electric) that makes off-system sales. In response to the New York State Department, the Commission finds that if a retail sales function also engages in off-system sales of excess electric power in the wholesale market, the Transmission Provider must observe the Standards of Conduct vis-à-vis the retail sales function.[51] However, that retail sales function itself does not become subject to Federal jurisdiction. Further, the Commission sees no conflict between the Standards of Conduct and New York's State-imposed standards of conduct which govern the behavior of New York's LDCs. In our view, these Standards of Conduct will complement each other rather than conflict.

48. This rule does not regulate—directly or indirectly—the provision of rates, terms and conditions of service for local distribution, production, gathering, processing or intrastate transmission. The Standards of Conduct provide rules that help define activities that would be unduly discriminatory or preferential in a Transmission Provider's conduct towards affiliates that are also involved in interstate natural gas and wholesale electricity markets. Preventing such violations is at the heart of the Commission's statutory mandate, and the Commission has not exceeded this mandate in limiting Transmission Providers' interactions with other Energy Affiliates.

a. Regulatory Text of the LDC Exemption

49. The preamble discussion in the Final Rule, which exempts from the definition of Energy Affiliate State-regulated LDCs that solely engage in retail service and make no off-system sales (Final Rule at P 44) does not exactly track the regulatory text in § 358.3(d)(5)(v), which exempts from the definition of Energy Affiliate State-regulated LDCs that do not engage in off-system sales. CenterPoint notes this inconsistency and argues that LDCs should be allowed to participate in wholesale energy market activities other than off-system sales, such as asset management.[52]

50. For example, under CenterPoint's proposal, a State-regulated affiliated LDC that does not engage in off-system sales, but manages or controls transmission capacity of another, buys, sells, trades, or administers natural gas or electric energy, or engages in financial transactions relating to the sale or transmission of natural gas or electricity would be exempt from the definition of Energy Affiliate.

51. The Commission will not extend the LDC exemption to include an LDC that engages in Energy Affiliate activities that are not directly related to its State-regulated retail sales functions. Such Energy Affiliate activities include, acting as a merchant, agent, or asset-manager for others. Moreover the Commission will amend the regulation at § 358.3(d)(5)(v) to clarify that a State-regulated LDC is exempt from the definition of Energy Affiliate if it provides solely retail service and engages in no off-system or other Energy Affiliate activities. This is consistent with the discussion in the preamble of the Final Rule at P 44. The new regulatory text will exempt: "A State-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system customers, and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4) * * *."

b. Retention of the LDC Exemption

52. IOGA–WV argues that the Commission erred in exempting any LDCs from the definition of Energy Affiliate. IOGA–WV argues that in Appalachia, integrated natural gas companies utilize their affiliated LDCs to share information and dominate the interstate natural gas market. IOGA–WV argues that LDCs can easily avoid the constraints of the Final Rule, without making off-system sales. IOGA–WV argues that LDCs can create marketing affiliates which make off-system sales while allowing their parent LDCs to continue to qualify for the exemption in the definition of Energy Affiliate, and thereby circumvent the Standards of Conduct. IOGA–WV argues that § 358.3(d)(5)(v) should be amended to eliminate this loophole.

53. The Commission denies rehearing on this issue. The Commission does not find that this is a realistic concern. And, any sales from the LDC to its marketing affiliate would be off-system sales and void the LDC's exemption from the Standards of Conduct.

Any marketing affiliate of the LDC would also be the affiliated Transmission Provider's Marketing or Energy Affiliate. In either case, an exemption from the definition of Energy Affiliate would not apply.

c. Scope of the LDC Exemption

54. Questar supports the exemption granted to State-regulated LDCs provided they do not make off-system sales.

55. On the other hand, AGA, Dominion, INGAA, National Fuel-Distribution, National Fuel-Supply, New York State Department, NICOR, NiSource, NW Natural and Kelso

[50] *See* section 4 of the NGA and section 205 of the FPA.

[51] A Transmission Provider that is a member of the NYISO, relinquishes control over its operations to the NYISO and does not have access to transmission or customer information may request an exemption from the Standards of Conduct.

[52] See February 9, 2004 Informational Filing of CenterPoint Energy Gas Transmission Company in Docket No. TS04–2–000.

Beaver, ONEOK, PA–OCA, PS&EG, and Xcel argue that the Commission erred in exempting from the definition of Energy Affiliate only LDCs that make no off-system sales. They argue that to the extent LDCs make off-system sales on non-affiliated Transmission Providers, there is no threat of affiliate abuse. AGA and PA–OCA argue that prohibiting LDCs from making off-system sales will increase costs to the LDCs' retail customers or impose additional compliance costs on LDCs. AGA also argues that "this formulation of the exemption is contrary to the way in which the Commission applied the exemption for local distribution companies in Order No. 497." (footnote omitted.) AGA also cites to *National Fuel Gas Supply Corp.*, 64 FERC ¶ 61,192 at 62,582 (1993), where under the previous rules, the Commission did not treat National Fuel-Distribution (an affiliated LDC) as a marketing affiliate to the extent its off-system sales were not transported by its affiliated pipeline, National Fuel-Supply. AGA argues that LDCs, faced with State-mandated obligations to serve, must stand ready to meet peak load requirements. Off-peak, AGA argues, LDCs need the flexibility to make off-system sales (and capacity releases) to minimize their costs.

56. Dominion argues that "it is difficult to envision a material advantage that a pipeline could provide its affiliated LDC with respect to off-system sales that do not involve that pipeline." [53] Dominion adds that if a pipeline were to find a way to afford an affiliate an advantage on another pipeline, "its action would likely violate the Commission's open access regulations, the antitrust laws, or other laws and regulations."

57. National Fuel-Distribution argues that restricting an LDC's firm participation in off-system sales would reduce market efficiencies, increase the cost of gas to the LDC's customers, and reduce price transparency. National Fuel-Distribution states that 99 percent of its off-system sales are conducted in the daily gas market and argues that the probability of its affiliated pipeline, National Fuel-Supply, having any information that could affect the market, if divulged, is remote. In addition, National Fuel-Distribution claims the affiliated LDC will gain no advantage over a non-affiliated LDC with affiliated pipeline information.

58. NW Natural and Kelso Beaver argue that it is arbitrary and capricious to subject it to compliance with the Standards of Conduct if it chooses to make off-system sales, while non-affiliated LDCs face no such burden.

59. The Commission denies rehearing requested by those who seek to expand the LDC exception to include those LDCs that make off-system sales which are not transported on an affiliated Transmission Provider. The Commission does not agree that in these circumstances there can be no harm.

60. Under the expansion of the LDC exemption sought by petitioners, Transmission Providers would be free to share transmission-related and customers' market information with their affiliated LDCs. In most states, large natural gas customers often take advantage of retail transportation programs by purchasing natural gas from competing wholesale suppliers; the local LDC also competes for these markets. Any LDC making off-system wholesale sales has a powerful incentive to maximize its revenues in those sales regardless of whether the sales take place on its affiliated Transmission Provider's system or off-system.[54] An LDC which makes off-system sales would be in a position to benefit from preferential information as would any other marketer.

61. The Commission recognizes that an LDC serving only its on-system customers must comply with pipeline balancing requirements and may be required to buy or sell de minimus quantities of natural gas in the wholesale commodity market, purchase short-term park and loan and storage services, buy or sell imbalances in the pipeline's cash out mechanism, or take other steps to meet pipeline tariff balancing tolerances on a daily or monthly basis. LDCs with limited participation in wholesale markets to satisfy these needs will continue to be exempt from the definition of Energy Affiliate as long as they are not participating in the other activities described in § 358.3(d).

62. The Commission also notes that the level of LDCs' off-system sales varies significantly. For example, National Fuel-Distribution, the affiliated LDC of National Gas-Supply, makes off-system sales of approximately $63,000,000.[55]

63. In some circumstances transmission activities on the affiliated Transmission Provider will have a large and direct impact on the prices of natural gas and wholesale electricity on points upstream or downstream of the affiliated Transmission Provider's system.[56] For example, an operational flow order (OFO) on one of the three large interstate natural gas pipelines serving New York City-area markets or on one of the regional storage fields could have a direct and significant effect on the price of gas in that market. In today's spot markets, advance information of an OFO would allow an LDC to use that knowledge to position itself at the expense of other market participants.

64. It would be difficult for an LDC whose shared employees operated both the Transmission Provider and LDC systems not to have advance notice of a Transmission Provider's OFO. An affiliated LDC would have a head start in responding to an OFO, and would have a first shot at the spot market to sell off stranded supply or purchase needed make-up supply. Any advantage afforded by transmission information not available to non-affiliates would come at the expense of other wholesale market competitors. When the LDC does not make off-system sales, this degree of vertical integration does not harm wholesale markets or non-affiliated competitors.

65. Contrary to National Fuel-Distribution's argument, early knowledge of events or circumstances on an affiliated pipeline system has value. As noted by National Fuel-

[53] Dominion at p. 12.

[54] To the extent an LDC can reduce its costs of purchasing natural gas through off-system sales, this may reduce cost to retail ratepayers—a laudable goal—to the extent those cost savings are passed through the retail rates. However, some states permit the revenues from off-system sales to be shared with stockholders. Under these circumstances, the benefits of off-system sales to retail ratepayers claimed by petitioners is overstated because these benefits are shared with the LDC's stockholders.

[55] National Fuel Gas Company, 2002 Annual Report and Form 10–K.

[56] Energy Information Administration, "Northeast Pipeline Restrictions Ease Following Weather Reprieve," Natural Gas Weekly Update (January 22, 2004). ("Operational Flow Orders (OFOs), which can vary significantly in severity, were issued by a variety of pipelines last week during the record cold snap in the Northeast. When these restrictions are in place, customers without firm contracted capacity on the pipeline generally are interrupted and cannot access Gulf supplies because transportation through the pipeline grid is not available. Thus, prices in the Northeast and Gulf region become disconnected as customers in the Northeast without firm contracted capacity seek incremental supplies only in local market areas. The result last week was that prices at some Northeast trading locations spiked to $45 per MMBtu or more for gas deliveries the following day.") *See also* Energy NewsData, Western Price Survey, "Spring Housekeeping Stymies Some Shipping" (April 12, 2002). ("Gas prices were skewed by a host of maintenance on pipelines and storage facilities coming out of the Rocky Mountains. Aside from some maintenance on El Paso's San Juan lateral the temporary closure of the big Clay Basin storage facility in northeast Utah meant that shippers without firm capacity on Westbound pipelines had no place to put their supplies. The San Juan Basin index price plummeted to $0.99/MMBtu Tuesday and pipelines were ordering their customers to follow their reservations or face penalties.")

Distribution, daily trading occurs over a compressed time period. Other market participants have little time to obtain rapidly breaking news that can affect spot prices. Yet the affiliated LDC, were it not considered an Energy Affiliate, would have the ability to get the relevant news first, and act on it before other market participants had access to the information. Contrary to National Fuel-Distribution's assertion, this would be an unduly preferential advantage.

66. As to NW Natural's and Kelso Beaver's assertions that they are placed at a competitive disadvantage relative to non-affiliated LDCs making off-system sales, the Commission disagrees. The Standards of Conduct do not put affiliated LDCs at a disadvantage with respect to non-affiliated LDCs. Rather, affiliates and non-affiliates are on an equal footing because all market participants will have the same access to transmission information and transmission services. Non-affiliated market participants do not have access to the Transmission Providers' transmission or customer information. The petitioners have not provided any explanation why an affiliated LDC that is participating in the wholesale sales market or is providing asset management services for a customer is entitled to unduly preferential access to the Transmission Providers' transmission or customer information.

67. The Commission wishes to make clear that it is not the purpose or the effect of this Final Rule to prohibit LDCs from making off-system sales. Rather, if an LDC chooses to make off-system sales, its affiliated Transmission Provider must comply with the Standards of Conduct vis-à-vis its affiliated LDC as an Energy Affiliate. The Transmission Provider's compliance with the Standards of Conduct places all wholesale market participants, affiliated and non-affiliated, on an equal footing.

d. Treatment of LDC Divisions

68. AGA requests clarification whether the LDC division of an electric Transmission Provider would be considered an Energy Affiliate because the division does not meet the definition of "Affiliate" in § 358.3(b). The Commission clarifies that an LDC division of an electric Transmission Provider shall be considered the functional equivalent of an Energy Affiliate if it engages in the activities described in §§ 358.3(d)(1), (2), (3) or (4), and codifies this at § 353.3(d)(5). Although the division is not technically an "affiliate," it is functionally equivalent to an affiliate. This is consistent with § 284.286, where the Commission treats a pipeline's sales operating unit as if it were a marketing affiliate for purposes of the Standards of Conduct.

69. PSEG makes a similar request for rehearing arguing that the Hinshaw pipeline division of an electric Transmission Provider is not an "Affiliate" and thus the relationship between an electric Transmission Provider and its Hinshaw pipeline division[57] should not be governed by the Standards of Conduct. PSEG claims that the Commission should not be concerned about the relationship between an electric Transmission Provider and its Hinshaw pipeline division because there is no potential for abuse. Further, PSEG argues that it would be unduly burdensome citing its joint operations between its wires and pipes divisions in storm restoration efforts, customer operations/call centers and applicance service operations.

70. The Commission denies PSEG's request to categorically exclude an electric Transmission Provider's Hinshaw gas pipeline division from the definition of Energy Affiliate. There are instances in which the Commission is concerned about the relationship between the electric Transmission Providers and gas divisions. For example, to the extent a combined electric/gas utility's Hinshaw pipeline affiliate provided transportation services delivering natural gas to third-party independent generators which compete in the same wholesale markets for electricity, either directly, or indirectly, through the release of interstate transmission capacity on an upstream pipeline, the events of its day-to-day operation,[58] would have an impact on the competitors and markets for wholesale electricity in that region. The Hinshaw pipeline also collects information about the natural gas scheduled to flow to the competing generators, and to the natural gas-fired generation operated and self-scheduled by the combination utility's electric Transmission Provider. Knowledge of sudden changes in the availability of natural gas transmission capacity could be of competitive value to the electric Transmission Provider (in the wholesale real-time markets), the Hinshaw pipeline (the NYMEX futures exchange and spot markets), and to each of its Energy Affiliates (in all three areas) if it could be acquired shortly before such knowledge became publicly available. However, in the example of shared services that PSEG raises, employees who provide storm restoration efforts, staff customer operations/retail call centers and appliance service operations would be the types of support or field and maintenance employees that could be shared under § 358.4(a)(4).

71. The Commission will revise the definition of Affiliate at § 358.3(b) to incorporate this clarification as follows: "[a]n Affiliate includes a division that operates as a functional unit."

e. Applicability of the Standards of Conduct to Special Purpose Certificated Interstate Service

72. National Fuel-Distribution raises the issue of its status as a holder of limited-jurisdictional certificates authorizing interstate exchanges and NGA section 7(f) authorizations. Specifically, National Fuel-Distribution also raises the issue of whether its status under its special purpose interstate exchange certificate or NGA section 7(f) service area determinations subject it to being considered as either a Transmission Provider or an Energy Affiliate. National Fuel-Distribution asks the Commission to clarify that this is not the case. The Commission clarifies that National Fuel-Distribution's special purpose interstate exchange certificate and NGA section 7(f) service area determinations do not make it either a Transmission Provider or an Energy Affiliate.

iii. Producers, Gatherers, and Processors

Final Rule

73. In the Final Rule, the Commission defines Energy Affiliate to include any affiliate of a Transmission Provider that conducts any of the following activities in U.S. energy markets: Engages in or is involved in transmission transactions; manages or controls transmission capacity; buys, sells, trades, or administers natural gas or electric energy; or engages in financial transactions relating to the sale or transmission of natural gas or electric energy (collectively Energy Affiliate activities).[59] Producers, gatherers and processors that perform such activities are Energy Affiliates as defined in the Final Rule.

[57] PSEG claims that its Hinshaw pipeline division possesses a limited-jurisdiction certificate from the Commission under Order No. 63.

[58] These events might include capacity constraints caused by competing demands, scheduled maintenance, unscheduled equipment breakdowns, and unexpected significant fluctuations in demand or supply.

[59] These are the characteristics of an Energy Affiliate, as defined in 18 CFR 358.3(d).

Requests for Rehearing and/or Clarification and Commission Conclusions Gatherers and Processors

74. Petitioners [60] assert that gatherers and processors performing their traditional functions do not hold transmission capacity on affiliated pipelines and, similar to the LDCs, should not be considered Energy Affiliates. Several petitioners argue that it is inconsistent for the Commission to treat gatherers and processors differently than LDCs. Questar argues that gatherers and processors should not be defined as Energy Affiliates if they do not sell natural gas for resale, buy natural gas only for consumption of their own processing operational needs and do not ship natural gas on their affiliated interstate pipelines.

75. Shell Transmission and others argue that elimination of the prior exception from the Standards of Conduct issued under Order No. 497 for producers, gatherers, and processors will lead to significant duplication of costs for multiple offshore pipeline and gathering lines that are currently operated from one common operations center with consolidated staff (*e.g.*, contract administrators, engineers, gas control operators).

76. INGAA, CenterPoint, Dominion, Duke Energy and El Paso argue that it is important to allow affiliated pipelines, gatherers, producers, and processors to share information during planning and financing of new infrastructure to ensure that needed supplies are brought efficiently and promptly to market, especially during periods of tight supply. Duke, Shell Transmission and Shell Offshore argue that separation of gathering functions from transmission functions, and the associated restrictions on communications, will impede pipeline operations. A number of small independent producers request that the Commission allow gatherers to buy the gas that the independent producers sell without converting the gatherers into Energy Affiliates.[61]

77. The Commission clarifies that gatherers and processors that are not involved in or engage in transmission transactions; do not manage or control transmission capacity; do not buy, sell, trade or administer natural gas or electric energy; and do not engage in financial transactions relating to the sale or transmission or natural gas or electric energy are not Energy Affiliates. If a gatherer or processor merely provides a gathering or processing service and only purchases natural gas to supply operational needs (such as compression fuel), and does not engage in any of the other activities described above, it is not an Energy Affiliate. In these roles, gatherers and processors provide services to wholesale market participants but do not compete with them. When their operations are limited to this service-provider role, they are not defined as Energy Affiliates and do not become subject to the separation of functions requirement and information disclosure prohibitions of the Standards of Conduct. However, gatherers or processors that buy gas for resale or hold or manage transmission capacity are Energy Affiliates as defined in § 358.3(d)(3).

78. Further, the Final Rule neither prohibits nor hinders the kinds of cooperation and communications Shell Transmission notes among its producing and gathering affiliates, such as producer personnel at platforms routinely performing field maintenance and operation activities, such as launching pigs on behalf of gathering affiliates or sharing operational status information. Many of the petitioners' concerns regarding defining producers, gatherers and processors as Energy Affiliates focus on the sharing of field and maintenance personnel and the sharing of operational information. As discussed in more detail below, the Commission is providing additional clarifications that address the petitioners' concerns regarding the sharing of information and field and maintenance employees between a Transmission Provider and its Marketing or Energy Affiliates.[62]

79. The Commission will not, however, grant a blanket exemption from the Standards of Conduct for gatherers or processors.

80. Specifically, CenterPoint argues that:

> Although a trading or financial affiliate might benefit from preferential access to information about the interstate pipeline's operations (by trading in natural gas or a related financial instrument whose value may be affected by a constraint on the pipeline), a similar benefit is unlikely to be conferred on a traditional gatherer.[63]

The Commission agrees with CenterPoint in both aspects of its argument: Trading and financial affiliates might benefit from preferential access to information about an interstate pipeline's operations; and a gatherer that does not conduct Energy Affiliate activities is unlikely to benefit from such information in the wholesale energy marketplace.

81. Accordingly, the Commission will continue to include producers, gatherers and processors in the definition of Energy Affiliate to the extent they engage in Energy Affiliate activities. A gatherer or processor is in a position to profit from preferential information if it engages in Energy Affiliate activities. Under the Commission's regulations, a gatherer or processor is not limited to selling at the terminus of its own physical facilities. Similarly, any entity, including a gatherer or processor, may also buy and sell energy futures traded on the NYMEX. Allowing preferential access to information about transmission capacity or third party customers would confer an undue competitive advantage on such an entity. A gatherer or processor which also participates in Energy Affiliate activities is indistinguishable from any other Energy Affiliate in this regard.

82. Furthermore, preferential access to market information gives Transmission Provider affiliates fuller, more complete, and more timely information about market conditions, potentially contestable markets and the prices other market participants will be willing to accept.[64] The Commission finds that such preferential access to information is contrary to the Commission's statutory mandate to prevent undue discrimination or preferences.

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[60] CenterPoint, El Paso, Questar, Shell Transmission, Williston Basin and Williams.

[61] Letters were addressed to Chairman Pat Wood from Mr. Bruce Morain, INOK Investments, L.L.C. (dated February 18, 2004); Mr. Jerry G. Kerr, Plymouth Resources, Inc. (dated February 24, 2004); Mr. Web Carr, C and E Operators, Inc. (dated February 27, 2004); Mr. Carlos Barton "Scooter" Griffin, Jr.—President, GeoVest Incorporated (February 20, 2004), Mr. Robert T. Wilson, AGS Oil and Gas Ventures, Inc. (dated February 12, 2004); and C & L Oil and Gas Corp (dated March 9, 2004). Each of these letters has been placed in the public record in Docket No. RM01–10–000.

[62] See also the discussions of the Sharing of Field and Maintenance Personnel, and Critical Operating Information Exceptions, below.

[63] CenterPoint at pp. 8–9.

[64] In addition, this information will be available to the Transmission Provider affiliates at little or no cost. Transmission Providers acquire market-relevant information in the normal course of operating transmission facilities, with the expenses of this information collection generally recovered through their regulated cost-based rates. In contrast, independent wholesale market participants incur significant costs to gather market intelligence of inferior scope and completeness. Absent Commission-mandated disclosure of transmission information, much of this market information will not be available to independent wholesale market participants at any price. And under the Commission's requirements, sensitive information is often protected from disclosure, or subject to delays in disclosure to protect shippers from competitive harm. For independent wholesale market participants, the market is opaque, blurry and constantly changing, but for affiliates allowed to share employees or information with a Transmission Provider, the market will be transparent and relatively clear.

83. The Commission's ruling here does not prohibit gatherers or processors from buying or selling natural gas. The Standards of Conduct do not prohibit those activities. Rather, a Transmission Provider must observe the Standards of Conduct vis-à-vis gatherers and processors that choose to participate in wholesale commodity markets or engage in Energy Affiliate activities to ensure that the Transmission Provider treats its affiliated entities the same way it treats non-affiliated entities.

Producers

84. The Commission denies rehearing to the extent petitioners argue that producers should be exempt from definition as Energy Affiliates. Natural gas producers affiliated with Transmission Providers are Energy Affiliates as defined in § 358.3(d). Producers are perhaps the largest marketers of natural gas.[65] First sales of natural gas are fully deregulated.[66] In addition, like any other willing entity in the natural gas industry, producers are authorized to make sales for resale.[67] These sales take place at points throughout the interstate natural gas delivery network, not just at the point of production in the producing fields. Affiliated producers, because they have the same opportunities to exploit Transmission Provider information for undue advantage, are Energy Affiliates under the Final Rule.

85. Contrary to the concerns of petitioners, defining producers as Energy Affiliates will not subject them to inappropriate public release of competitively-sensitive information under the Standards of Conduct. An affiliated producer seeking information about the potential expansion of infrastructure necessary to secure connections to new production is afforded the same confidential treatment as any other shipper seeking new service under the transaction-specific protections of the Final Rule.[68] To the extent an affiliated producer is neither a potential shipper nor supporting the request of a potential shipper, its access to information on capacity or the availability of service to transport new supplies will be appropriately limited to the same information available to any other party.

86. Open access interstate natural gas pipelines are required to post on their Internet websites timely and accurate information about available capacity and services.[69] Those who believe that posted information does not meet the requirements of the Commission's regulations requiring disclosure of available capacity[70] may contact the Commission's Enforcement Hotline or file a formal complaint. The Commission does not believe that the equitable treatment afforded transmission information will hinder the development of new infrastructure.[71]

87. Dominion requests the Commission to exclude from the definition of an Energy Affiliate a producer that sells its own production to another affiliated company. The Commission denies Dominion's request. Dominion has not provided any justification why a Transmission Provider should be allowed to share employees and transportation or customer information with its affiliated producer. Specifically, the Commission is concerned that a Transmission Provider's non-affiliated customers could be harmed if a Transmission Provider could freely share customer information with affiliated producers. Nor has Dominion explained why the producer's sale to an affiliate eliminates the Commission's concerns about affiliate abuse.

iv. Intrastate and Hinshaw Pipelines

The Final Rule

88. Intrastate and Hinshaw pipelines are included in the definition of Energy Affiliate to the extent that they engage in or are involved in transmission transactions in U.S. energy markets or participate in the other activities described in § 358.3(d). Allowing such intrastate pipeline or Hinshaw pipeline to have preferential access to a transmission system or information would be inconsistent with the prohibitions against undue preferences or discrimination in section 4 of the NGA in the provision of interstate transportation service.

Requests for Rehearing and/or Clarification and Commission Conclusions

89. Several petitioners[72] request clarification that LDCs which are also Hinshaw pipelines will nonetheless continue to qualify for the LDC exemption from Energy Affiliate status. They argue that Hinshaws are State-regulated and nearly always are LDCs. Empire argues that a Hinshaw pipeline, by definition, must be regulated by a State to qualify for the Hinshaw exemption.

90. Saltville and SCG argue that there is no difference between a Hinshaw pipeline and an LDC in terms of their relationship with jurisdictional pipelines, and therefore there is no basis for this asymmetrical regulation. Questar argues that Hinshaw pipelines which are also State-regulated LDCs should not be counted as Energy Affiliates under the Standards of Conduct. To do so, Questar argues, would destroy vertical integration efficiencies, increase costs,[73] reduce service reliability, reduce firm transportation capacity by 105,000 Dth per day, or more, and reduce the service flexibility available to all shippers.

91. Kinder Morgan Pipelines argue that even Hinshaw pipelines which are not LDCs should be exempt because they are State regulated and analogous to affiliated Transmission Providers, which are not defined as Energy Affiliates.

92. Kinder Morgan Pipelines argue that intrastate pipelines, including Hinshaw pipelines, which provide State-regulated intrastate transportation, bundled commodity sales, and interstate transportation pursuant to section 311 of the NGPA, but do not make any off-system sales should be excluded from the definition of Energy Affiliate.[74] The Texas Pipeline Association, an association of nineteen intrastate natural gas pipelines operating in Texas, and Williams also object to categorizing intrastate pipelines and Hinshaw pipelines as Energy Affiliates.

93. The Commission agrees generally with the requests that an LDC's status as

[65] Gas Daily, "Producers solidify hold on marketer rankings," March 23, 2004, p. 1 and p. 12. *See also*, Gas Daily, "Midtier players dominate Q3 marketer rankings," December 9, 2003. (Producers BP, Shell and ConocoPhillips were ranked first, third and fourth, representing nearly 40 percent of the total reported volumes used in the rankings of 22 marketers. Thirteen of the top 22 marketers listed were producers.)

[66] Natural Gas Wellhead Decontrol Act of 1989, Pub L. 101–60, 103 Stat. 157 (1989).

[67] 18 CFR 284.402 (2003).

[68] *See* 18 CFR 358.5(b)(5) ("A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.")

[69] *See* 18 CFR 284.13 (2003).

[70] *Id.*

[71] To the extent posted information is not sufficient for producers' needs, this concern is appropriately addressed to the Transmission Providers, affiliated and otherwise, who may wish to consider the needs of their customers and other industry stakeholders for timely and adequate information about available capacity and system capabilities on their Internet website postings.

[72] *See, e.g.*, AGA, Dominion, Duke Energy, Empire, INGAA, Kinder Morgan Pipelines, National Fuel-Distribution, National Fuel-Supply, NICOR, Questar, Southwest Gas, and Xcel.

[73] Questar argues that full separation of functions would require the construction of new pipeline facilities costing $44 million, which would increase Questar's annual cost-of-service by $14.4 million.

[74] Kinder Morgan Pipelines also filed a request for exemption in Docket No. TS04–249–000, which the Commission will consider by separate order.

a Hinshaw pipeline does not invalidate its treatment as an LDC under the Standards of Conduct. Hinshaw pipelines are typically LDCs, regulated by State commissions, and primarily focused on providing retail service within their States. To the extent Hinshaw pipelines are state-regulated LDCs, make no off-system sales and do not engage in any of the activities described in § 358.3(d), they are not Energy Affiliates. However, as is the case for LDCs, Hinshaw pipelines which make off-system sales or participate in Energy Affiliate activities will continue to be defined as Energy Affiliates.

94. The Commission clarifies that intrastate pipelines that do not engage in Energy Affiliate activities described in § 358.3(d) are not defined as Energy Affiliates. To the extent that an intrastate pipeline makes sales or hold interstate transmission capacity or engages in Energy Affiliate activities, they are Energy Affiliates.

v. Affiliated and Foreign Transmission Providers

Final Rule

95. Section 358.3(d)(5)(ii) excludes affiliated Transmission Providers from the definition of Energy Affiliate because they are already subject to the requirements of the Standards of Conduct. Section 358.3(d)(5)(i) excludes foreign affiliates that do not participate in U.S. energy markets. In the Final Rule, the Commission also stated that affiliated gas pipeline Transmission Providers that cross the United States international border will not be treated as Energy Affiliates as long as neither the Transmission Provider nor the affiliated international pipeline shares employees or information with its Marketing or Energy Affiliate.[75] However, this was not codified in the regulatory text for § 358.3(d)(5)(i).

Requests for Rehearing and/or Clarification and Commission Conclusion

96. INGAA requests clarification because foreign affiliated Transmission Providers do not fit within the definition of a "Transmission Provider," which transmits energy or gas in U.S. interstate commerce under parts 157 or 284 of the Commission's regulations. *See* 18 CFR 358.3(a). INGAA and Enbridge also argue that the Commission cannot regulate the behavior of foreign affiliated pipelines.

97. The Commission is granting rehearing and revising the regulatory text to better reflect our intent that foreign affiliates that engage in transmission activities that cross the U.S. international border, which activities are regulated by the state, province or national regulatory board of the foreign country in which the facilities are located, will not be treated as Energy Affiliates. Nonetheless, a Transmission Provider cannot use a foreign affiliate as a conduit to circumvent the independent functioning requirement or information sharing prohibitions of the Standards of Conduct. Contrary to petitioners' assertions, the Commission is not regulating the behavior of a foreign corporation, but merely regulating the behavior of the jurisdictional Transmission Provider. The Commission does not prohibit Canadian pipelines from sharing Canadian transmission information or employees with its Canadian Affiliates. However, a Transmission Provider may not share information and employees with its Canadian-affiliated Transmission Provider if it is a conduit for sharing information with an Energy Affiliate doing business in the U.S. commodity or transmission markets. A Canadian Energy Affiliate that does business in the U.S. commodity and transmission markets should not be afforded undue preferences or services.

vi. Holding or Parent Companies

Final Rule

98. Section 358.3(d)(5)(iii) excludes from the definition of Energy Affiliate, a holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets.[76]

Requests for Rehearing and/or Clarification and Commission Conclusion

99. NiSource, Dominion, EEI, INGAA and AGA request clarification that a parent or holding company does not become an Energy Affiliate of a Transmission Provider by acting as a guarantor on a contract or approving financial expenditures for the subsidiary Transmission Provider. EEI states that if such parent or holding companies providing financial security are deemed to be Energy Affiliates, few entities will qualify for the exemption. The petitioners argue that the parent/holding company is not engaged in a financial transaction and thus should not become an Energy Affiliate. Similarly, National Fuel-Distribution and Duke Energy request clarification that the performance of corporate functions by a parent or holding company will not make the parent or holding company an Energy Affiliate. On the other hand, NASUCA argues that service companies that engage in financial transactions should be included in the definition of Energy Affiliate.

100. One of the roles of a parent or holding company is to act as guarantor or provide financial security for its subsidiaries. Generally, when a parent or holding company acts as guarantor for a Transmission Provider or its Marketing or Energy Affiliate, the parent or holding company is not engaging in any transmission transactions or in energy or natural gas commodity markets. Thus, the Commission clarifies that it is permissible for a parent or holding company to act as guarantor or to provide financial security for its subsidiaries without becoming an Energy Affiliate. A parent or holding company may also approve the financial expenditures for its affiliated Transmission Provider. But, as discussed later, when a parent or holding company engages in financial transactions that are the functional equivalent of physical transactions in the commodity market, it acts as an Energy Affiliate under the Standards of Conduct.

101. Duke Energy, INGAA and Kinder Morgan Pipelines request rehearing of the Commission's decision to exclude only parent or holding companies that are not involved in energy or natural gas markets or transmission transactions. They argue that a parent or holding company should not be considered an Energy Affiliate if it is involved in energy or transmission transactions. The Commission rejects this request for a categorical exemption because parent or holding companies could then be used to circumvent the Standards of Conduct. However, on a case-by-case basis, the Commission will consider specific requests.

Requests for Clarification Regarding Parent Companies

102. CenterPoint requests clarification that certain divisions of a parent company could be Energy Affiliates while the remainder of the parent company would not be considered an Energy Affiliate. The Commission cannot answer this question generically. The Commission will review this issue on a case-by-case basis after evaluating

[75] Final Rule at P 60.

[76] Generally, a holding company is registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935. A parent company or corporation is a company or corporation with multiple subsidiaries and/or controls other companies. A service company is usually a subsidiary of a holding or parent company/corporation that generally provides shared services to the parent or holding company's subsidiaries and/or affiliates and/or serves as a mechanism to employ all corporate employees.

the individual structure of the Transmission Provider and its parent company.

103. Duke Energy requests that the Commission clarify how it will treat a parent company that is also a Transmission Provider. At Duke Energy, the electric utility Transmission Provider, which engages in retail and wholesale sales, is a division of the parent company, which is also the parent company for several natural gas Transmission Providers. Because the parent company is also the electric public utility that engages in wholesale sales of power, Duke Energy is concerned that its parent company does not qualify for the parent company exemption. Duke Energy proposes that the Commission treat its parent company as an affiliated Transmission Provider. Under this scenario, Duke Energy pipeline subsidiaries will be permitted to provide non-public information to Duke Energy management for corporate governance purposes; but Duke Energy will be prohibited from sharing such information with the sales or marketing unit of Duke Energy or of any other Energy Affiliate. Duke Energy argues that this is also consistent with the codification at § 358.4(a)(5) that allows a Transmission Provider to share senior officers and directors with their Marketing and Energy Affiliates.

104. Duke Energy's proposal is an acceptable means to comply with the Standards of Conduct. As a parent company/Transmission Provider, Duke Energy is subject to the independent functioning requirements and information sharing prohibitions of the Standards of Conduct. It is already required to put in place mechanisms to ensure that the unit/division that engages in wholesale sales of power functions independently and does not have access to transmission or customer information.

105. Kinder Morgan Pipelines also ask for clarification that its parent company, which has LDC assets, qualifies for the parent company exemption. The fact that the LDC is a parent company is no reason to exempt it from its status as an Energy Affiliate. Unlike the situation at Duke Energy, where the parent company/Transmission Provider is responsible for implementing all of the Standards of Conduct, Kinder Morgan Pipelines on the other hand are seeking an exemption from the Standards of Conduct. As an LDC making off-system sales, it falls squarely within the definition of Energy Affiliate. Therefore, the Commission denies Kinder Morgan Pipelines' request. However, the Commission will consider individual requests if the parent company/LDC can demonstrate an acceptable level of independent functioning for the LDC division and ensure that there are adequate safeguards to restrict the sharing of transmission and customer information.

106. Finally, Enbridge urges the Commission to clarify that a foreign parent company can use the parent company exemption if it otherwise qualifies. The Commission so clarifies.

vii. Service Companies

Final Rule

107. The Final Rule excludes from the definition of Energy Affiliate service companies that do not engage in energy or natural gas commodity markets or are not involved in transmission transactions in U.S. energy markets. *See* 18 CFR 358.3(d)(5)(iii). The Final Rule also states that if a Transmission Provider utilizes a service corporation or other subsidiary as the mechanism for employment, all the employees assigned, dedicated or working on behalf of a particular entity, such as a Transmission Provider or Energy Affiliate, are subject to the Standards of Conduct requirements as if they were directly employed by the Transmission Provider or Energy Affiliate.[77]

Requests for Rehearing and/or Clarification and Commission Conclusions

108. SCG requests that the Standards of Conduct not apply to service company employees. In addition, Dominion requests clarification that only service company employees who devote all or nearly all of their time to a Transmission Provider or Energy Affiliate will be subject to the Standards of Conduct.

109. NASUCA, on the other hand, wants clarification that all employees of the Transmission Provider, Marketing or Energy Affiliate will be covered by the definition of Energy Affiliate. NASUCA also argues that service (or parent or holding) companies that engage in financial transactions relating to the sale or transmission of natural gas or electric energy should not be exempt from the definition of Energy Affiliate. NASUCA expresses concern that financial transactions that are the functional equivalent of physical transactions are not subject to the Standards of Conduct and could enable transmission or customer information about counterparties to a transaction to be passed among Energy Affiliates.

110. The Commission rejects SCG's rehearing request. Service company employees are properly subject to the Standards of Conduct if they are working on behalf of the Transmission Provider or Energy Affiliates. Otherwise, such service companies would become mechanisms by which to circumvent the Standards of Conduct. Employees working on behalf of a Transmission Provider or its Marketing or Energy Affiliates are subject to the Standards of Conduct as if those individuals were directly employed by the respective companies. If service company employees only provide support services, they can be shared. But, if they have any energy-affiliated or transmission-related functions, they cannot be shared.

111. With respect to NASUCA's concerns, service (or parent/holding) companies may engage in certain types of financial activities that include capital funding, creditworthiness and risk management type activities, as discussed herein. However, when a service company (or parent/holding company) engages in financial transactions that may be functionally equivalent to physical transactions in the commodity and transmission markets, it will be treated as an Energy Affiliate. For example, the purchase or sale of financial transmission rights in an RTO or trading in NYMEX natural gas or electric futures will give a service company a stake in wholesale energy markets because they are engaging in wholesale commodity activities. Whenever the service company has such a stake, it will be treated as an Energy Affiliate under the Standards of Conduct.

112. Cinergy, Enbridge, Entergy, NiSource, Southern and Xcel raise a concern that when employees of a service company are assigned to an Energy Affiliate, the service company could be deemed to be "involved" or "engaged" in transmission transactions on behalf of an affiliate. Xcel claims that service companies regularly employ transmission and marketing employees, but segregate employees to comply with the Standards of Conduct, which is consistent with the preamble language of the Final Rule at Paragraph 57, but not the service company exemption included in the regulatory text at § 358.3(d)(5)(iii). Cinergy requests clarification that only those service company employees who are assigned, dedicated or working on behalf of the Transmission Provider or Energy Affiliate, and not the entire service company will be subject to the Standards of Conduct.

113. EEI requests clarification on the functions that can be shared in a service company. Similarly, Enbridge, INGAA,

[77] Final Rule at P 57.

NICOR, NiSource and Southern request clarification that service companies, such as those with operating control centers that conduct operations on behalf of Transmission Providers or which have a substantial number of employees assigned to perform Energy Affiliate functions, are not themselves Energy Affiliates.

114. The Commission clarifies that a service company will not become an Energy Affiliate merely by providing Transmission or Marketing or Energy Affiliate employees. However, the service company must segregate those employees if they are assigned to those functions. Service companies use an assortment of mechanisms to assign employees to their affiliates, such as work orders, loans, and agency agreements. While the service company does not necessarily become an Energy Affiliate, the Transmission Provider is ultimately responsible to ensure that all employees assigned or dedicated to it observe the independent functioning and information sharing prohibitions of the Standards of Conduct.

115. EEI requests clarification that, when a service company acts as agent for a Transmission Provider, it is not involved in energy markets or transmission transactions. In several investigations of entities that violated the former standards of conduct, the Commission discovered that agency agreements resulted in improper sharing of information or abusing native load preferences.[78] Agency agreements can also be used to aggregate control over transmission capacity. Therefore, the Commission clarifies that a service company may act as agent for its affiliated Transmission Provider, Marketing or Energy Affiliate without becoming an Energy Affiliate so long as the service company is involved in only non-energy related activities, *e.g.*, acting as an agent to lease office space or to obtain cleaning service. However, if the service company/agent is involved in energy-related activities, it is an Energy Affiliate.

viii. Affiliates Buying Power for Themselves

Final Rule

116. Section 358.3(d)(5)(iv) excludes from the definition of Energy Affiliate, "an affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of that natural gas or energy."

Requests for Rehearing and/or Clarification and Commission Conclusions

117. EEI argues that an affiliate should not be prohibited from using its affiliated Transmission Provider if it is buying power or gas for its own consumption. EEI argues that the term "using" is unclear and should be revised to reflect the Commission's concern with the affiliate "arranging" transmission on the affiliated Transmission Provider.

118. The Commission clarifies that the affiliate may use an affiliated Transmission Provider to buy power or gas for its own consumption. However, to ensure that the Transmission Provider does not provide undue preferences to an affiliate, the Transmission Provider must treat the affiliate as an Energy Affiliate unless the gas or power is for its own consumption. Therefore, an electric generator that is using electric energy or natural gas transported on the affiliated Transmission Provider for the subsequent generation of electricity will not be exempt from the definition of Energy Affiliate.

D. Definition of Marketing, Sales or Brokering

Final Rule

119. Section 358.3(e) defines marketing, sales or brokering as "a sale for resale of natural gas or electric energy in interstate commerce." A sales and marketing employee or unit includes: (1) An interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter,[79] and (2) a public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales.[80] *See* 18 CFR §§ 358.3(e)(1) and (2).

120. The Final Rule retains the exemption of Order No. 889, which permits sharing between the bundled retail sales function and the public utility Transmission Provider's interstate transmission function. However, the Final Rule emphasizes, that the Standards of Conduct will apply to merchant employees who are engaged in sales or purchase of power that will be resold at retail pursuant to state retail access programs.[81] In the Final Rule, the Commission also emphasizes that if a retail sales function employee engages in any wholesale sales, such as selling excess generation to a non-retail customer, the retail function will be treated as a wholesale merchant function.[82] It is not appropriate for an entity that participates in the wholesale market to obtain an undue preference when competing with non-affiliates for transmission capacity. When a wholesale merchant function does take advantage of its affiliate status, customers, competitors and the market are harmed. Therefore, as stated in the Final Rule, if a retail sales unit engages in any wholesale sales, the separation of functions requirement will apply.[83]

i. Treatment of Retail Sales Employees

Requests for Rehearing and/or Clarification and Commission Conclusions

121. Calpine and TAPS request rehearing of the Commission's decision to retain the exemption of Order Nos. 888 and 889. Calpine claims that the Commission failed to carry out its statutory duties under section 205 of the FPA by allowing the Transmission Provider to use the same employees for its interstate transmission business and bundled retail business. Similarly, TAPS argues that the Commission identified discrimination and failed to remedy it. TAPS argues that the Commission has the jurisdiction to eliminate the loophole and should do so.

122. Calpine also urges the Commission to limit retail sales function employees from getting any undue preferences when they go into the wholesale market to buy power to

[78] *See* Transcontinental Gas Pipe Line Corp., 102 FERC ¶ 61,302 (2003) (*Transco*); Idaho Power Corp., 103 FERC ¶ 61,182 (2003) (*Idaho Power*); and Cleco Corp., 104 FERC ¶ 61,125 (2003) (*Cleco*).

[79] Section 284.286 of the Commission's regulations currently requires an interstate natural gas pipeline to separate its interstate transmission function from its unbundled sales service, essentially treating the pipeline's sales business as the equivalent of an affiliated marketing company. *See* 18 CFR 284.286 (2003).

[80] The term bundled retail sales employees means those employees of the public utility Transmission Provider or its affiliates who market or sell the bundled electric energy product (including generation, transmission, and distribution) delivered to the transmission provider's firm and non-firm retail customers.

[81] In Order No. 888–A, "if unbundled retail transmission in interstate commerce occurs voluntarily by a public utility or as a result of a state retail access program, the Commission has exclusive jurisdiction over the rates, terms and conditions of such transmission." FERC Stats. & Regs., Regulation Preambles January 1991–June 1996 ¶ 31,036 at 31,781. *See also*, American Electric Power Service Corporation, 81 FERC ¶ 61,332 (1997), *order on reh'g*, 82 FERC ¶ 61,131 (1998), order on reh'g, 82 FERC ¶ 31,357 (1998). *See also*, *New York et al.* v. *FERC et al.*, 535 U.S. 1 (2002).

[82] *See* Final Rule at P 78–79.

[83] The Commission wants to prevent an employee that is shared between the bundled retail sales function and the wholesale merchant function from taking advantage of the preferences afforded retail service or utilizing information that may be shared with the retail function but not the wholesale function.

satisfy native load. Calpine claims that when retail sales function employees buy power to serve native load, they have an incentive to favor their own generation or to grant a preference to affiliated wholesale suppliers over competitive suppliers.

123. The Commission rejects petitioners' request for rehearing. An electric public utility Transmission Provider engaging in bundled retail sales is providing a service that is somewhat similar to the service provided by an LDC when it makes on-system sales. Where an electric public utility Transmission Provider's wholesale merchant function solely engages in bundled retail sales, the Transmission Provider is not required to treat its merchant function as a Marketing Affiliate. Similarly, if a natural gas Transmission Provider's affiliated LDC solely makes on-system sales, the Transmission Provider is not required to treat the LDC as an Energy Affiliate. As stated in the Final Rule, a public utility Transmission Provider is permitted to use the same employees for its interstate transmission business and its bundled retail sales business.[84] However, when the merchant function of an electric public utility Transmission Provider participates in the wholesale market, the Transmission Provider must treat the merchant function as a Marketing Affiliate.

ii. Treatment of Electricity Provider of Last Resort Service (POLR)

Requests for Clarification and Commission Conclusion

124. Cinergy seeks clarification that a Transmission Provider serving as the Provider of Last Resort (POLR) in a State that has adopted a retail choice program is permitted to continue to serve retail customers as it had prior to the introduction of competitive retail electric service. Essentially, Cinergy wants POLR employees to fall outside the definition of marketing or sales unit personnel under Order No. 2004 because, in Cinergy's view, POLR service is essentially the same as the bundled retail sales service for which Order No. 2004 provides an exemption.[85]

125. Cinergy claims that CG&E, its affiliate located in Ohio, provides unbundled electric transmission service with the prices of electric generation supply, transmission and distribution separately stated and regulated pursuant to Ohio's electric retail competition program. Cinergy suggests that, other than the Ohio requirement to allow retail customers to purchase electric generation from an alternative supplier, CG&E's POLR service is a "package" of electric generation, transmission and distribution service virtually identical to the bundled retail service offered by another Cinergy affiliate, PSI, in Indiana, which has not adopted a retail choice program.

126. Cinergy contends further that CG&E's Account Representatives, who support Cinergy's retail customers, are subject to the independent functioning requirement of the Standards of Conduct because they provide services related to POLR generation, regulated distribution and transmission services. Cinergy also states that in Ohio, the competitive retail electric affiliates must be separate from the Transmission Function and Ohio has promulgated a code of conduct to prevent competitive advantages to affiliates.[86] Cinergy claims that CG&E's POLR employees do not reserve or schedule transmission service; these functions are handled by Cinergy's marketing unit, which observes the Standards of Conduct.

127. The Commission is not prepared to adopt Cinergy's proposed rule change and amendment to the definition of "marketing, sales or brokering" to accord POLR service the same treatment, on a generic basis, as the Commission has accorded bundled retail sales. Since the details surrounding CG&E's POLR service or the POLR services of other Transmission Providers are not available, the Commission will not modify the definition of "marketing, sales or brokering" to allow automatic exemptions in all cases. Nonetheless, the Commission does not rule out the possibility that a particular POLR service deserves treatment equivalent to that accorded bundled retail sales treatment.

Accordingly, the Commission will entertain case-by-case requests for exemption of a POLR service based on the relevant facts and circumstances.

E. Definition of a Transmission Function Employee

Final Rule

128. Section 358.3(j) defines the term "Transmission Function Employee" as an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

Requests for Rehearing and/or Clarification and Commission Conclusions

129. INGAA and Dominion request clarification on whether the Commission intended that the term "operating employee" (at P 112) of the Final Rule have the same meaning as by the term "Transmission Function Employee." Similarly, INGAA is also concerned that Paragraph 120 of Final Rule states that a Transmission Function Employee is "participating in directing, organizing or executing transmission system or reliability functions of a Transmission Provider," but that phrase is not identical to the language contained in the definition of Transmission Function Employee in § 358.3(j). LG&E/KU urge the Commission to replace the phrase "including day-to-day duties and activities * * *" in the definition of Transmission Function Employee with "defined as the * * *" LG&E states that by using the phrase "including day-to-day" there is still some doubt as to whether certain employees, specifically officers and directors, would be considered Transmission Function Employees because the term "including" implies that this is not an exhaustive list of the types of activities that could be considered transmission functions.

130. Order No. 2004 replaced the term "operating employee," which was originally defined in Order Nos. 497–E and 497–F, with the term "Transmission Function Employee." The term "operating employee" and "Transmission Function Employee" are not identical. In Order No. 497–E, the Commission defined "operating employee" as "an individual who has day-to-day duties and responsibilities for planning, directing, organizing, or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities."[87] "Operating employee" was used in discussions for both a Transmission Provider as well as its Marketing Affiliate, hence the references to gas sales or gas marketing activities. Whereas the term "Transmission Function Employee" is defined as "an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission

[84] Final Rule at P 78.

[85] Section 358.3(e)(2) states "sales and marketing employee or unit includes * * * [a] public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales."

[86] *See* Cinergy at p. 9, referencing Ohio Rev. Code Ann. section 4928.17 (Anderson 2003) and Ohio Admin Code section 5901; 1–20–16.

[87] Order No. 497–E, FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,987 at 30,996.

system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing organizing or carrying out transmission-related operations." *See* 18 CFR 358.3(j). Consequently, the term "operating employee" also covered employees engaged in gas sales or marketing functions whereas the term Transmission Function employees does not.

131. With respect to LG&E/KU's specific question, the discussion at Paragraph 120 of the Final Rule was intended to provide additional guidance on the definition of the term Transmission Function Employee, which uses the phrase "including, but not limited to." There is no real distinction between the preamble discussion and the regulatory text because the regulatory text did not attempt to capture every activity of a Transmission Function Employee. As the Commission stated in the preamble of the Final Rule, and in a series of cases interpreting the term "operating employee," this definition includes, but is not limited to, employees engaged in "day-to-day" activities. There may be "Transmission Function Employees" who do not engage in "day-to-day" activities, but are performing, on less frequent, but equally as significant basis, transmission functions, such as organizing expansion of capacity or deciding on whether to construct an interconnection. In the past, the Commission looked at the actual duties and responsibilities of the individuals. For example, when considering the responsibilities of a particular officer, the Commission evaluated whether he participated in directing, organizing or executing transmission or wholesale merchant functions, including whether he had direct access to transmission or reliability information on the EMS or other databases and whether he approved contracts or transactions.[88]

F. Definition of Marketing Affiliate

132. Several petitioners, including Dominion, state on rehearing that the Commission did not define the term "Marketing Affiliate," although it is used in the Final Rule and in the regulatory text. Dominion urges the Commission to adopt a formal definition of the term Marketing Affiliate to promote understanding.

133. The Final Rule defines marketing at 18 CFR 358.3(e) and affiliate at 18 CFR 358.3(b). However, since the Commission uses the term Marketing Affiliate throughout the Final Rule and regulatory text, the Commission is adopting Dominion's request and will codify a definition of Marketing Affiliate at § 358.3(k): "Marketing Affiliate means an Affiliate as that term is defined in § 358.3(b) or a unit that engages in marketing, sales or brokering activities as that term is defined in § 358.3(e)."

G. Independent Functioning

134. One of the most significant elements of the Standards of Conduct is the requirement that the Transmission Provider function independent of its Marketing and Energy Affiliates. The independent functioning of the Transmission Provider limits its ability to give its Marketing and Energy Affiliates unduly preferential service or access to information. However, the Commission also recognizes that a Transmission Provider and its Marketing and Energy Affiliate should be permitted to share employees to conduct corporate governance functions, to take advantage of the efficiencies of corporate integration and to respond to emergency circumstances. As a result, the Commission has permitted the sharing of officers and directors, support service employees, and field and maintenance employees between a Transmission Provider and its Marketing/Energy Affiliates in most circumstances. Although the Commission has permitted sharing for the categories of employees noted above, the Commission will evaluate in compliance audits and investigations, employees' actual functions and duties to determine whether the Transmission Provider is appropriately applying this exemption.

i. Sharing of Senior Officers and Directors

Final Rule

135. In the Final Rule, the Commission stated that it would allow senior officers and directors who do not engage in transmission functions, or have day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations to maintain such positions with the Transmission Provider and its Marketing or Energy Affiliates. The Commission, however, cautioned that shared executives may not serve as conduits for sharing transmission, customer or market information with a Marketing or Energy Affiliate.

Requests for Rehearing and/or Clarification and Commission Conclusions

136. On rehearing, AGA, Cinergy, Dominion, Duke Energy, EEI, Entergy, INGAA, NICOR, NiSource and Shell Offshore request that the Commission codify the exemption for senior officers and directors in the regulatory text. The Commission agrees with this request and will codify the exception at § 358.4(a)(5) as follows: Transmission Providers are permitted to share with their Marketing and Energy Affiliates senior officers and directors who are not "Transmission Function Employees" as that term is defined in § 358.3(j).

137. LG&E/KU argue that the codification for the senior officers and directors exemption should be broader in scope. They argue that certain executives may have dual supervisory responsibility for the company's transmission and merchant functions with a fiduciary obligation to manage both functions.

138. The Commission denies LG&E/KU's request. An executive who has day-to-day transmission-related responsibilities should not have a role in Marketing or Energy Affiliates. The Final Rule has taken into account the fiduciary obligation of high-level officers and directors (who may be shared) by adopting the more flexible "no conduit" rule regarding the sharing of information rather than the more stringent "automatic imputation" rule. *See* Discussion in Final Rule at P 144–150. This enables the limited number of shared officers and directors to oversee all functions of the company without violating the Standards of Conduct. If LG&E/KU or any Transmission Provider has a specific concern about the roles of its executive employees, the Transmission Provider can seek clarification from the Commission as to whether sharing is permitted under this Final Rule.

139. Duke Energy also requests that when the Commission codify the officers and directors section, it also clarify that the information sharing prohibitions do not limit officers' and directors' ability obtain information necessary to engage in corporate governance functions. The Commission also incorporates regulatory text in § 358.4(a)(5) to better reflect that the Commission does not intend to restrict corporate governance functions as follows: "A Transmission Provider may share transmission information covered by §§ 358.5(a) and (b) with its senior officers and directors provided that they do not (1) participate in directing, organizing or executing transmission

[88] *See* Ameren Services Company, 87 FERC ¶ 61,145 at 61,600 (1999).

system operations or marketing functions; or (2) act as a conduit to share such information with a Marketing or Energy Affiliate.

140. Williams filed a motion for clarification that incorporates a proposal to revise the Final Rule to create a two-tier exemption for senior officers and directors to facilitate corporate governance functions. Under Williams' proposal, the "Group A" category would include directors of the parent company, the Chief Executive Officer (CEO), the Chief Finance Officer (CFO) and the General Counsel, who would have unfettered access to information to discharge their corporate governance duties. Williams proposes that these individuals never be considered Transmission Function employees even if they occasionally engage in some Transmission Functions, such as approving a significant transaction for a particular business unit. Williams proposes that "Group B" would include a small group of senior officers who are involved in the day-to-day operations of their respective business units, including Gas Pipelines (transmission), Midstream, Exploration and Production and Power. Williams argues that the Group A officers need input and advice from the Group B officers and should jointly constitute an "Executive Officer Team." Williams proposes seven "protections" for the Group B officers that it argues are consistent with the Commission's goals of Order No. 2004. Allegheny, Cinergy, Duquesne, KCPL and PGE filed motions in support of Williams' request. However, INGAA and El Paso urged the Commission to avoid imposing Williams' suggested approach on a generic basis to other companies. INGAA and El Paso caution the Commission not to assume that the approach proposed by Williams is appropriate or workable for all companies. Similarly, EEI similarly states while that the Williams approach may address corporate governance concerns at Williams, the Commission should not assume that the Williams' approach is appropriate for all companies.

141. The Commission denies Williams' proposal for revision. As discussed in the Final Rule, the Commission has already taken into account the need for the CEO and CFO to comply with the certification requirements of section 302 and section 906 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act) by adopting the no-conduit rule. The Commission clarifies that in most circumstances, the "Group A" executives Williams identifies would not be Transmission Function Employees, as that term is defined. The CEO, CFO or General Counsel of a company would not become a "Transmission Function Employee" by approving major capital expenditures for the company. The Commission will not approve the creation of an "Executive Officer Team" that includes "Transmission Function Employees" and employees of a Marketing or Energy Affiliate that do not qualify for shared treatment. The goals of Order No. 2004 cannot be achieved if Group B employees who are involved in the day-to-day operations of the Marketing or Energy Affiliates had access to the Transmission Providers' transmission and customer information.

ii. Sharing of Field and Maintenance Personnel

Final Rule

142. Section 358.4(a)(4) codifies the Commission's historical policy of allowing Transmission Providers to share field and maintenance personnel with their Marketing and Energy Affiliates.

Requests for Rehearing and Clarification and Commission Conclusions

143. INGAA, Dominion, NiSource and Shell Gas seek clarification that a "field supervisor" who has the ability to restrict or shut down the operation of a particular section of a pipeline will not be treated as an operating employee, despite the language of Order No. 497–F.[89] INGAA claims that virtually any field employee may restrict or shut down the operation of a particular stretch of pipeline in a particular set of circumstances, and that this function alone should not render those field personnel "Transmission Function Employees." In lieu of controlling the flow on the pipeline, INGAA and Dominion urge the Commission to adopt a definition that would be limited to those supervisory employees who may plan to shut down a pipeline in advance or may choose to shut down based on economic factors.

144. In addition, Dominion urges the Commission to clarify that the exception for field and maintenance employees also applies to technicians, mechanics and their immediate supervisors who are responsible for electric transmission activities.

145. The Commission clarifies that shared field personnel may include field supervisors who do not take part in advance planning for facility shut downs or are involved in shutting down facilities based on economic reasons.

146. The Commission also clarifies that the field and maintenance employees exception also applies to technicians, mechanics and their immediate supervisors who are responsible for electric transmission activities.

iii. Risk Management Employees

Final Rule

147. The Final Rule prohibits the sharing of risk management employees who are operating employees of either the Transmission Providers or their Marketing or Energy Affiliates.[90] The Final Rule also prohibits risk management employees from being a conduit for improperly sharing information because they are in a position to use transmission, customer and market information to give Marketing and Energy Affiliates undue advantages.

Requests for Rehearing and/or Clarification and Commission Conclusions

148. SCG and its affiliate SCE&G request rehearing of the prohibition against sharing risk management employees who are also operating employees of the Transmission Provider or Marketing or Energy Affiliate.

149. Cinergy, NiSource, Dominion, Duke Energy, EEI and Entergy request that the Commission codify that risk management employees can be shared so long as they are not operating employees of the Transmission Provider or Marketing or Energy Affiliate.

150. Dominion, INGAA and NiSource urge the Commission to clarify that the types of risk management functions described in the Final Rule do not constitute transmission functions.[91] INGAA also urges that risk management employees should be permitted to make general appraisals of creditworthiness of particular counterparties (governed by business standards and not tariffs) and set appropriate exposure limits to which corporations are willing to be exposed. Similarly, Dominion argues that managing corporate-wide risk and investment, approving expansions and establishing spending limits should not

[89] In Order No 497–F, the Commission stated, "to the extent that supervisory field personnel have the ability to control a pipeline's gas operations, they would be considered operating employees." Order No. 497–F, 66 FERC ¶ 61,347 at 62,167.

[90] Final Rule at P 112.

[91] In the Final Rule, the Commission identified various examples of risk management functions, including: (1) Managing corporate-wide business risk exposure of the corporation and/or its affiliates; (2) business risk exposure for third parties; (3) managing overall corporate investment for the entire corporation; (4) assessing credit risk for counter-parties; (5) approving expansion projects; and (6) establishing spending, trading and capital authorities for each business unit. Final Rule at P 109.

be considered risk management functions. Dominion and INGAA also urge the Commission to permit the management of corporate exposure including financial transactions for the sole purpose of hedging risks.

151. The Commission rejects the rehearing requests of SCG and SCE&G. Risk management employees will have access to valuable transmission, customer and market information that can be used to the detriment of third parties.

152. As per the request of several petitioners, the Commission will codify the exception that permits Transmission Providers to share risk management employees with their Marketing and Energy Affiliates at § 358.4(a)(6).

153. With respect to the petitioners' requests to identify certain risk management activities that can be shared between a Transmission Provider and its Marketing and Energy Affiliates, the Commission finds that it is permissible for the risk management function to: (1) Manage corporate-wide business risk exposure of the corporation and/or its affiliates; (2) evaluate business risk exposure for third parties on an aggregate basis; (3) manage overall corporate investment for the entire corporation; (4) approve expansion projects; and (5) establish spending, trading and capital authorities for each business unit. However, the risk management function is not permitted to assess creditworthiness of a particular customer under a pipeline's tariff. This is consistent with the Commission's previously articulated policy, in which the Commission held that the "act of deciding whether a potential shipper can become an actual shipper by satisfying the creditworthiness requirements under [a pipeline's] tariff is a transportation function." [92]

154. While risk management function employees are permitted to engage in the types of activities identified in the preceding paragraphs, the employee must pay particular attention to communications with Marketing and Energy Affiliates. Certainly, transmission and customer information are not a part of setting corporate-wide limits or managing corporate investment. A risk management function employee cannot share transmission or customer information obtained from the Transmission Provider with its Marketing or Energy Affiliates. For example, the risk management function employee can communicate to the Marketing or Energy Affiliate that Company X has reached or exceeded its corporate-wide credit limit or its credit rating has been downgraded by non-affiliated financial rating entities, but the risk management function employee is prohibited from telling the Marketing or Energy Affiliate that Company X has reached or exceeded its corporate-wide credit limit because it had not paid its transmission fees. The distinction is subtle, but important. The Commission will not permit the risk management function employee to be used as a vehicle to share information with the Marketing or Energy Affiliates that the Transmission Provider is prohibited from sharing under § 358.5(a).

iv. Lawyers as Transmission Function Employees

Final Rule

155. The Final Rule does not prohibit a Transmission Provider from sharing support employees with its Marketing and Energy Affiliates. But, if employees, such as lawyers, are engaging in transmission functions, they are not "support" staff; rather, they are Transmission Function Employees who are subject to the Standards of Conduct. The Commission will not permit a Transmission Provider to label individuals or categories of employees as "support" to circumvent the independent functioning requirement.

Requests for Rehearing and/or Clarification and Commission Response

156. Dominion, INGAA, Entergy and SCE&G requested clarification on when lawyers become Transmission Function Employees. Entergy argues that when lawyers provide legal or regulatory advice or set policy they should not become Transmission Function Employees. Dominion urges the Commission to clarify that lawyers can be considered shared support employees, and only if they engage in transmission functions would they be considered Transmission Function Employees and could not be shared.

157. The Commission clarifies that if lawyers participate in transmission policy decisions on behalf of a Transmission Provider, the Commission considers that activity as a Transmission Function and the lawyer is a Transmission Function Employee. For example, a lawyer who participates in a decision on whether the Transmission Provider should seek a contract with a customer is acting as a Transmission Function Employee. If, however, the lawyer is asked to implement the Transmission Provider's business decision and negotiate a contract with that customer, the lawyer would not be a Transmission Function Employee.

H. Identification of Affiliates on Internet

i. Posting Organizational Charts.

Final Rule

158. Section 358.4(b) requires all Transmission Providers to post information, including organizational charts and job descriptions, with respect to Marketing and Energy Affiliates on their OASIS or Internet websites.

159. Specifically, § 358.4(b)(3) requires Transmission Providers to post organizational charts and job descriptions on their respective Internet websites or OASIS. The Transmission Provider is also required to update the organizational charts and job descriptions within seven business days of a change. In addition, where a Transmission Provider shares clerical, field or maintenance employees with its Marketing or Energy Affiliates, the Transmission Provider must clearly identify the business units for the shared employees and provide a description of the shared services functions or responsibilities; but it is not required to provide names or job descriptions for the clerical or field or maintenance employees. *See* 18 CFR 358.4(b)(3)(ii).

Requests for Rehearing and/or Clarification and Commission Conclusions

160. Shell Gas requests that the Commission reconsider the website postings and argues that the complexity of organizational charts for affiliates is an unjustified burden.

161. On the other hand, Calpine urges the Commission to require Transmission Providers to post full identification of all affiliates with a statement of each affiliate's activities and a designation of which affiliates are considered by the Transmission Provider to be Marketing Affiliate or providing wholesale merchant functions. Calpine further urges the Commission to require the Transmission Provider to post, for each affiliate it claims to be exempt from the definition of Energy Affiliate, a full and complete explanation for the basis of the determination.

162. Duke Energy requests that the Commission clarify that the requirement to post Transmission Provider job titles applies only to employees involved in transmission or wholesale sales functions and their managers. Dominion notes that the Final Rule contemplated (at P 125) a Transmission Provider posting organizational charts and job descriptions for business units that are shared between a Transmission Provider

[92] *See* Vector Pipeline, L.P., 97 FERC ¶ 61,065 (2001).

and its affiliated Marketing or Energy Affiliates and urges the Commission to codify this requirement.

163. The purpose of posting organizational charts and job descriptions is to provide a mechanism for the Commission and market participants to determine whether the Transmission Provider is functioning independently of its Marketing and Energy Affiliates. This transparency is an integral component of the independent functioning requirement. Hence, the requirement to post an organizational chart that identifies the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates. *See* 18 CFR 358.4(b)(3)(i). When posting the business unit for the Transmission Provider as required by § 358.4(b)(3)(ii), it must identify whether any of those business units are shared with the Marketing or Energy Affiliates. If a corporation uses a service company as the employment mechanism for the Transmission Provider and its Marketing or Energy Affiliates, the organizational charts should clearly specify those circumstances. Similarly, if a corporation uses both functional and structural organizational charts for its management, the organizational charts must accurately reflect its operations. Support units that are shared between a Transmission Provider and its Marketing or Energy Affiliates must be clearly identified.

164. Several petitioners, including EEI, argue that the Commission should eliminate the requirement of § 358.4(b)(3)(ii) to post employees that are shared between the Transmission Provider and Energy or Marketing Affiliates since Transmission Providers are not permitted to share employees. The Commission rejects petitioners' request. There may be circumstances where a Transmission Provider will be permitted to share employees with its Marketing or Energy Affiliates, such as when officers and directors are shared or when a Transmission Provider obtains a partial waiver. Therefore, the Commission will retain the requirement to post shared employees.

165. In addition, the organizational charts should accurately reflect when Transmission Providers use service company employees to staff the Transmission Provider or its Marketing or Energy Affiliates. The organizational charts should be well organized and self-explanatory and company specific acronyms should be explained in a legend. In several recent investigations, the Commission found that organizational charts and job descriptions were incomplete, inaccurate or difficult to understand, and in some instances, did not include all the required job titles, names of managers and job descriptions.[93]

166. EEI also urges the Commission to reconsider the time when information should be posted and recommends that the Commission require the information to be updated within 14 days, rather than the seven days in the Final Rule. The Commission already considered EEI's request in the comments to the NOPR. Originally, the Commission proposed that the OASIS and Internet websites be updated within three days. However, upon consideration of the petitioners' requests for additional time to update the information, the Commission balanced the need for transparency and updated information with the Transmission Providers' ability to actually update the information and determined that updating the information within seven days was the appropriate balance.

167. Southwest Gas also requests clarification whether the posting requirements apply to a Transmission Provider that has no Marketing or Energy Affiliate. The Commission clarifies that the Transmission Provider should still post the information (as well as develop procedures and designate a Chief Compliance Officer).

ii. Posting of Merger Information

Final Rule

168. Section 358.4(b) requires the Transmission Provider to post the name(s) and address(es) of potential merger partner(s) and Energy Affiliates on the OASIS or Internet website. This is consistent with the Commission's current policy, which treats potential merger partners as affiliates.[94]

Requests for Clarification and Commission Conclusion

169. Several petitioners query whether it is acceptable to put a link to potential merger partners' websites in lieu of posting all the required information on its own website. The Commission finds that it is acceptable, so long as the link sends the user directly to the appropriate location and is kept up to date.

170. Dominion also requests clarification regarding the timing of the posting of merger information because the regulatory text at § 358.4(b)(3)(iv) requires the posting within seven days of when the merger is announced, but the preamble discussion stated that the merger information should be posted within seven days after a potential merger is announced. *See* Final Rule at P 127. The Commission clarifies that the information should be posted within seven days of when a potential merger is announced and will revise the regulatory text to reflect the discussion in the preamble of the Final Rule and herein.

iii. Transfer of Employees

Final Rule

171. Section 358.4(c) requires a Transmission Provider to post notices of employee transfers on the OASIS or Internet website.

Requests for Rehearing and/or Clarification and Commission Conclusions

172. Dominion requests clarification on whether the Transmission Provider is also required to post the transfers between the Marketing and Energy Affiliates. Dominion argues that the regulatory text at § 358.4(c) does not accurately reflect the discussion in the Final Rule at P 128.

173. The Commission so clarifies. The Final Rule is intended to capture the transfers between a Transmission Provider on the one hand and its Marketing or Energy Affiliates on the other. The first line of regulatory text at § 358.4(c) is, therefore, revised, as follows: "Employees of the Transmission Provider, Marketing or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the Standards of Conduct. Notices of any employee transfers between the Transmission Provider, on the one hand, and the Marketing or Energy Affiliates, on the other, must be posted on the OASIS or Internet website, as applicable."[95]

iv. Posting Standards of Conduct Procedures

Final Rule

174. Section 358.4(e) requires Transmission Providers to post written procedures implementing the Standards of Conduct on their OASIS or Internet websites in lieu of filing them with the Commission.

[93] See *Transco supra* note 86. *See also* National Fuel Gas Supply Corporation, 103 FERC ¶ 61,192 (2003).

[94] Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70983 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,111 at 31,887 (Nov. 15, 2000), *reh'g denied*, Order No. 642–A, 94 FERC ¶ 61,289 (2001).

[95] The remainder of the regulatory text at 18 CFR 358.4(c) remains the same.

Requests for Rehearing and/or Clarification and Commission Conclusions

175. Shell Offshore and Xcel request rehearing and would require Transmission Providers to submit their compliance procedures to the Commission for review and approval. Petitioners argue that there is no assurance that the Transmission Providers' Standards of Conduct procedures will conform to the Commission's intent in Order No. 2004. They ask that the Commission provide a formal review procedure under which the Commission will review and approve each Transmission Provider's compliance procedures. Shell Offshore claims that, over the years, the Commission often required several "rounds" of compliance filings before it approved a Transmission Provider's Standards of Conduct procedures.

176. The Commission denies rehearing. Previously, the Commission gave little generic guidance on acceptable implementation of the Standards of Conduct. In the Final Rule, the Commission identified the types of information that should be included in the compliance procedures,[96] and we provide more guidance herein.[97]

177. Moreover, posting the written procedures on the OASIS or Internet website gives users immediate access to the information and does not create additional administrative burdens for the Commission. Commission staff will be monitoring Standards of Conduct compliance closely. Although some petitioners expressed concern that the Hotline may not provide consistent advice or adequate mechanisms to respond to inquiries regarding the Standards of Conduct, the Commission finds that the Hotline is experienced in providing advice on and interpreting the Standards of Conduct.

178. NiSource requests clarification on where an electric utility Transmission Provider that no longer has an OASIS, presumably because it participates in an RTO or ISO with an OASIS, should post the required information. The Commission clarifies that the Transmission Provider should make arrangements, as is the current practice for some, to have the OASIS provider, *e.g.*, the RTO or ISO, include a link to the Transmission Provider's information. The link should be directly to the information postings, so the user does not have to search the website for the relevant information.

v. Training

Final Rule

179. At the request of petitioners, the Final Rule included a provision, at § 358.4(e)(5), that formalizes the requirement to train employees in the Standards of Conduct as follows: "Transmission Providers shall require all their employees to attend training and sign an affidavit certifying that they have been trained regarding the Standards of Conduct requirements."

Requests for Rehearing and/or Clarification and Commission Conclusions

180. Petitioners that request rehearing and clarification focus on two issues with regard to training: (1) Who should be trained; and (2) what types of training and certification are acceptable. INGAA and Alliance argue that a Transmission Provider should not be required to distribute the Standards of Conduct to the employees of its Marketing and Energy Affiliates because the Transmission Provider may not know the names of all those employees.

181. Some petitioners, including Alliance, BP, Cinergy, Dominion, Duke Energy, EEI, Entergy and INGAA, argue that training all employees would include employees who have no involvement in energy, gas, power or transmission functions and/or do not have access to information related to those functions. The Commission clarifies that it is the Transmission Provider's responsibility to ensure that all Transmission Provider employees and Marketing and Energy Affiliate employees with access to information about transmission, energy, power or marketing receive a copy of the Standards of Conduct and training.

182. EEI notes that the regulatory text requires training of all employees while the preamble identified several categories of employees who should be trained, such as shared support employees and risk management employees. EEI urges that training cover: (1) Transmission Function employees (and not all employees of the Transmission Provider); (2) Marketing Affiliate Employees; (3) shared support employees; (4) risk management employees who support the Marketing and Energy Affiliates; and (5) shared management employees. EEI also claims that some union contracts contain provisions restricting the ability to require the signing of affidavits by union employees. Also, according to EEI, for some workers, training does not seem appropriate, *e.g.*, cafeteria, building maintenance and field workers.

183. One of the goals of training of a broad group of employees is to ensure that employees with access to information about transmission, energy, power, gas or marketing functions understand the restrictions on sharing information and the prohibition on acting as a conduit for sharing information. For those employees without access to information about transmission, energy, or natural gas functions, however, training will not be required.

184. The purpose of distributing the Standards of Conduct and training is to ensure that employees are knowledgeable about their obligations under the Standards of Conduct. The Transmission Provider may implement this requirement by ensuring that the Marketing and Energy Affiliates distribute the Standards of Conduct to their employees, either in paper copy or electronically. As suggested by INGAA, this can be accomplished by sending a copy of the written procedures to the person designated to receive service at each of the Marketing and Energy Affiliates. The Chief Compliance Officer will be responsible for following up with the Marketing and Energy Affiliates to ensure that the Standards of Conduct were actually distributed to the appropriate employees.

185. Computer-based or electronic training is an acceptable method of training, as is a computer-generated certificate of training, in lieu of an affidavit from the employee certifying she or he has been trained.[98] The Chief Compliance Officer will be responsible

[96] Final Rule at P 36.

[97] A Transmission Provider is required to prepare written procedures explaining how it will comply with each of the Standards of Conduct and distribute the procedures to its employees. At a minimum, the Standards of Conduct procedures should: (1) Identify and explain the measures the Transmission Provider uses to keep secure transmission information and confidential customer information, such as locked file rooms, card-key access to control center and/or password restricted databases (more extensive information should be included where the Transmission Provider also shares facilities, including computer facilities, with its Marketing or Energy Affiliates); (2) identify the Chief Compliance Officer, describe his or her general duties and functions, and provide contact information; (3) identify any categories of employees shared between the Transmission Provider and its Marketing or Energy Affiliates (it is not necessary to identify the names of the shared support employees); (4) identify procedures that will be used to make sure that the names and addresses of its Marketing and Energy Affiliates, organizational charts and job descriptions, merger, transfer, tariff waiver and discount information are kept up-to-date on the OASIS or Internet website, and are archived consistent with the requirements of Parts 37 and 284 of the Commission's regulations; and (5) identify procedures to ensure that information, including documents and communications, are retained to demonstrate that the Transmission Provider is in compliance with the Standards of Conduct.

[98] With some computer-based training programs, a certificate of completion is generated when the student completes the entire training program.

for ensuring that employees participate in the Standards of Conduct training.

vi. Chief Compliance Officer

Final Rule

186. Section 358.4(e)(6) requires Transmission Providers to designate Chief Compliance Officers who will be responsible for Standards of Conduct compliance.

Requests for Clarification and Commission Conclusions

187. Entergy expresses concern that a Chief Compliance Officer, who may be a lawyer, does not become a Transmission Function Employee because she or he is involved in directing policy. Rather, Entergy urges that the Chief Compliance Officer be bound by the no-conduit rule for information she or he has access to. A Chief Compliance Officer does not become a Transmission Function Employee when she or he is involved in organizing a Transmission Provider's policies and procedures to comply with the Standards of Conduct. She or he will have access to transmission and customer information and is prohibited from being a conduit for sharing this information with the Marketing or Energy Affiliates.

188. NiSource requests clarification that one Chief Compliance Officer may be appointed for several affiliated Transmission Providers within the same corporate family. The Commission so clarifies. Several affiliated Transmission Providers within the same corporate family may designate the same Chief Compliance Officer who will be responsible for Standards of Conduct compliance activities.

I. Information Access and Disclosure Prohibitions

189. Section 358.5(a) requires Transmission Providers to ensure that employees of their Marketing and Energy Affiliates have access only to that information that is made available to the Transmission Providers' other transmission customers (*i.e.*, information posted on an OASIS or Internet website, concerning transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information).

190. The Final Rule also prohibits a Transmission Provider from disclosing to the employee of the Transmission Provider's Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another Transmission Provider.[99] The Final Rule also prohibits the Transmission Provider from sharing any information acquired from non-affiliated transmission customers or potential non-affiliated transmission customers or developed in the course of responding to requests for transmission or ancillary services on the OASIS or Internet website with employees of its Marketing of Energy Affiliates except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary service.[100]

191. The Commission established the following specific exemptions from the information disclosure prohibitions that permit a Transmission Provider to communicate with its Marketing or Energy Affiliate: (1) Information relating to specific transactions (transaction specific exemption);[101] (2) crucial operating information (crucial operating information exemption);[102] (3) information regarding a customer with that customer's voluntary consent (voluntary consent exemption);[103] and (4) certain limited generation information necessary to perform generation dispatch (generation dispatch exemption).[104]

Requests for Rehearing and/or Clarification and Commission Conclusions

192. Duke Energy argues the Commission to clarify that the Standards of Conduct do not interfere with the ability of co-owners of jointly-venture gas pipeline Transmission Providers to communicate with each other regarding the operations of the jointly owned pipeline.[105] Duke Energy explains that a bar on communication of transmission information could prevent a pipeline operator from sharing information with the Transmission Provider's management committee. Duke Energy argues that if the Final Rule prohibits such communications, then business partners will not be able to manage their investments, thus inhibiting additional corporate infrastructure development.

193. The Commission denies Duke Energy's request for rehearing. Duke Energy seems to be concerned that the rule prohibits pipeline-to-pipeline information that is necessary for operations. That is not the case. Transmission Providers may share information with affiliated Transmission providers (an affiliated Transmission Provider is not considered an Energy Affiliate) and may share crucial operating information consistent with § 358.3(b)(8)).

i. No Conduit Rule

Final Rule

194. Section 358.5(b)(7) provides that neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a Marketing or Energy Affiliate. The Final Rule also states that the Commission would adopt the "No-Conduit Rule" vis-à-vis shared employees.[106]

Requests for Rehearing and/or Clarification and Commission Conclusions

195. Petitioners, including EEI, Entergy, Cinergy and Duke Energy, argue that, although the discussion in the Final Rule purportedly adopts the "no conduit" rule, the regulatory text for § 358.5(b)(7) operates like an "automatic imputation" rule because it does not expressly permit the disclosure of information to permissibly shared employees, such as shared officers and directors. *See* Final Rule at P 145–150.

196. According to petitioners, the no-conduit rule has two purposes: (1) To prohibit the Transmission Provider from using anyone as a conduit to share transmission or customer information with a Marketing or Energy Affiliate; and (2) to allow certain information to be shared with shared, non-operating employees, such as officers and directors, as long as those employees are not a conduit for sharing transmission or customer information with a Marketing or Energy Affiliate.

197. The Commission grants petitioners' request. Sections 358.5(b)(1) and (2) expressly prohibit a Transmission Provider from sharing certain information with its Marketing or Energy Affiliates. Notwithstanding the prohibitions of §§ 358.5(b)(1) and (2), the Commission intends to allow a Transmission Provider to share such information with employees that may be

[99] 18 CFR 358.5(b)(1).

[100] 18 CFR 358.5(b)(2).

[101] 18 CFR 358.5(b)(5).

[102] 18 CFR 358.5(b)(8).

[103] 18 CFR 358.5(b)(4).

[104] 18 CFR 358.5(b)(6).

[105] Duke Energy explains that many joint-venture pipelines are operated by a management committee that makes operating decisions for the pipeline.

[106] *See* Final Rule at P 145–150. Under a "no-conduit rule," an employee that may be shared by a Transmission Provider and its Marketing or Energy Affiliate could receive transmission or customer information as long as the shared employee did not act as a conduit for sharing the information with the Marketing or Energy Affiliate.

shared so that they can engage in certain functions, *e.g.*, corporate governance, risk management or certain "support-type" services. Accordingly, the Commission is adopting additional regulatory text to reflect its intent to adopt the no-conduit rule in § 358.5(b)(7), as follows: "A Transmission Provider may share information covered by §§ 358.5(b)(1) and (2) with employees permitted to be shared under §§ 358.4(a)(4), (5) and (6) provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates."

ii. Crucial Operating Information Exemption

Final Rule

198. In the Final Rule, § 358.5(b)(8) permits a Transmission Provider to share crucial operating information with its Energy Affiliates to maintain the reliability of the transmission system.

Requests for Rehearing and/or Clarification and Commission Conclusions

199. Many petitioners, including Shell Gas, Duke Energy, NiSource, INGAA, and El Paso, challenge the Commission's decision to limit shared information to crucial operating information and argue that such a limitation may jeopardize a Transmission Provider's ability to operate safely by limiting the Transmission Providers' ability to communicate with interconnected facility operators. They argue that Transmission Providers should be allowed to share crucial operating information during circumstances other than those needed to maintain the reliability of the transmission system for a variety of reasons, including to confirm nominations. NiSource encourages the Commission to revise the regulatory text to include information transmitted between interconnected parties, whether affiliated or not, as needed to maintain normal operating conditions, to ensure system integrity or to ensure safe and reliable operations.

200. New York State Department seeks clarification that the general prohibition of § 358.4(a)(1) which provides that, except in emergency circumstances affecting system reliability, the Transmission Function Employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees, and is not intended to limit the specific exemption for sharing "crucial operating information" with an Energy Affiliate to maintain the reliability of the transmission system on a daily basis as provided in § 358.5(b)(8).

201. NiSource and Xcel request the Commission to clarify the types of operating information that may be shared or, in the alternative, require Transmission Providers to specify or list the operational information they intend to share in their respective Standards of Conduct. El Paso suggests that such a list include operational information regarding future expansions and how and when capacity will be available in the future. According to petitioners, the failure to require such a listing will create uncertainty as to what information will, or will not, be shared. INGAA and El Paso claim that companies need to be able to communicate with affiliates about future expansions and how and when capacity could be made available in the future, and to have a free exchange of operating information between a pipeline and its upstream affiliates.

202. NiSource and Shell Offshore challenge the Commission's suggestion that entities consult the Hotline as a source for guidance on a permissible communications. They argue that the Hotline may get inundated with calls and may give inconsistent advice. They question what a Transmission Provider should do if it does not agree with the Hotline's advice.

203. It appears that several petitioners have interpreted the phrase "crucial operating information to maintain the reliability of the transmission system" to mean information only needed during emergency circumstances to maintain system reliability. That was not the Commission's intent in the Final Rule. "Crucial" operating information is that information necessary to operate and maintain the transmission system on a day-to-day basis; it does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliate undue preference over a Transmission Provider's nonaffiliated customers in the energy marketplace. In using the term "crucial operating information," the Commission intended that Transmission Providers would be permitted to share day-to-day operational-type information with interconnected Energy Affiliates necessary to maintain the pipelines' operations; such information includes confirmations, nominations and schedules with upstream producers and gathering facilities, operational data relating to interconnection points, and communications relating to maintenance of interconnected facilities. The Commission expects that these types of communications will take place between the operators of the pipeline or gas control facilities. Those operators are prohibited from being a conduit for sharing transmission or customer information with other employees of the Marketing or Energy Affiliates. To better reflect the Commission's intent, the Commission is revising the regulatory text at § 358.5(b)(8) as follows: "A Transmission Provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliates."

204. The Commission declines to develop a list of the types of operating information that would be deemed "crucial" operating information. Such a list, whether created by the Commission, or created and posted by the Transmission Provider, likely would not identify all types of crucial operating information.

205. The Commission rejects petitioners' challenge to the Enforcement Hotline's ability to handle questions about crucial operating information. A Transmission Provider that does not agree with advice offered by the Enforcement Hotline is free to file a request for declaratory order or a complaint with the Commission.

206. Finally, Entergy argues that the Final Rule fails to codify a specific exemption to allow sharing of certain information required to comply with requirements imposed on operators of nuclear generating facilities by the Nuclear Regulatory Commission. The Commission declines to revise the regulatory text of § 358.5(b)(6) as requested by Entergy. The Commission stated in the Final Rule that a Transmission Provider will be permitted to share information required by other regulatory agencies such as NRC with its Energy Affiliate.[107] This type of information is covered by the crucial operating information exemption in § 358.5(b)(8), and further codification is not necessary.

iii. Transaction Specific Exemption

Final Rule

207. In the Final Rule, the Commission retained the "transaction specific exemption" by codifying it in § 358.5(b)(5). Under the exemption, Transmission Providers do not have to contemporaneously disclose information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

[107] Final Rule at P 155.

Requests for Rehearing and/or Clarification and Commission Conclusions

208. INGAA, National Fuel-Supply and Shell Offshore each request that the Commission clarify whether the transaction specific exemption covers requests by the Marketing or Energy Affiliate for the expansion or extension of the Transmission Provider's existing system, interconnection requests or discussions about building new infrastructure. Shell Offshore states that it is concerned about its ability to discuss available capacity or new capacity solutions for transportation of gas from reserves that have yet to be discovered or developed. Shell Offshore is concerned that such general discussions with a Marketing or Energy Affiliate would have to be disclosed because they do not fit within the scope of the transaction specific exemption. Similarly, National Fuel-Supply is concerned that not all requests seeking the establishment of an interconnection and the construction of related facilities are associated with a specific request for transportation service.

209. The Commission addressed a similar concern about the transaction specific exemption in its recent Order on Rehearing of Order No. 2003, the Standardization of Generator Interconnection Agreements and Procedures.[108] In that proceeding, the Commission addressed a request for clarification as to whether a Transmission Provider would violate the Standards of Conduct if it shared technical information regarding its transmission system with an interconnection customer that is an affiliate. The Commission noted that the definition of "Transmission Service" under § 358.3(f) includes interconnection service. Final Rule at P 105.

210. The Commission is balancing its concerns that a Transmission Provider will abuse its relationship with a Marketing or Energy Affiliate by providing it unduly preferential access to information about potential expansion plans or new production areas against the need to facilitate infrastructure development by allowing the Transmission Provider to coordinate construction and planning with an interconnecting gatherer, pipeline or producer. Therefore, the Commission clarifies that "Transmission" also includes an interconnection to facilitate gas transportation service. Thus, discussions between a natural gas Transmission Provider and an Energy Affiliate to provide an interconnection or expansion for the Energy Affiliate would be covered by the transaction specific exception. Interconnecting entities may discuss, the location, practicality and cost of potential interconnections with an affiliated Transmission Provider. The purpose of this is to encourage the Transmission Provider and an interconnecting Energy Affiliate to work together to develop additional infrastructure and facilitate development of production.

211. However, consistent with the requirements of Order No. 2003–A, the Commission will require the following additional safeguards to ensure that the Transmission Provider does not give its Energy Affiliate an undue preference. Specifically, when a Transmission Provider and an Energy Affiliate participate in scoping meetings or discussions about capacity expansion or new development, the Transmission Provider must: (1) Post an advance notice to the public on its OASIS or Internet website of its intent to conduct a meeting with its Energy Affiliate; (2) transcribe the meeting in its entirety; and (3) retain the transcript of the scoping meeting for three years and make it available to the Commission upon request.

212. Of course, Transmission Providers must provide interconnection and expansion service in a non-discriminatory fashion to similarly situated non-affiliated requestors. Moreover, a Transmission Provider cannot provide advance information to a Marketing or Energy Affiliate regarding a general expansion project because that would not be transaction-specific and such information would give the Marketing or Energy Affiliate an undue competitive advantage.

213. National Fuel-Supply also requests the Commission to "cure the ambiguity in the regulatory text" that limits the exemption to a Marketing or Energy Affiliate's specific "request" for transmission service in § 358.5(b)(5). National Fuel-Supply states that, in a narrow sense, a "request" for transmission is satisfied when a pipeline and a shipper enter into a transportation agreement. National Fuel-Supply suggests that the Commission revise the regulatory text to include an agreement resulting from a specific request. The Commission denies National Fuel-Supply's request to revise the regulatory text, but clarifies that by using the term "relate" in the phrase "if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service," the Commission intended to include the corresponding transportation service agreements that result from a "request."

iv. Voluntary Consent Exemption

Final Rule

214. Section 358.5(b)(4) provides that a non-affiliated transmission customer may voluntarily consent, in writing, to allow a Transmission Provider to share that customer's information with a Marketing or Energy Affiliate.

Requests for Rehearing and/or Clarification and Commission Conclusions

215. BP argues that the Commission should eliminate the "voluntary consent" exemption because, in the natural gas area, there is no business reason why a customer would allow the Transmission Provider to share that customer's information with a Transmission Provider's Marketing or Energy Affiliate. According to BP, Transmission Providers could coerce the customer to consent; therefore, such consent is not truly voluntary. BP proposes that the Commission require Transmission Providers to post any voluntary consent on their OASIS or Internet websites along with a statement that no tying arrangement was required and that no preferences, either operational or rate-related, were granted for the voluntary consent.

216. The Commission denies BP's request to eliminate the voluntary consent exemption. As discussed in the Final Rule, the Commission has permitted customers, in writing, to allow a Transmission Provider to share the non-affiliate's information with a Marketing Affiliate.[109] There are circumstances where a customer authorizes the Marketing Affiliate to act as its agent or asset manager regarding transmission transactions on the affiliated Transmission Provider. For example, a municipality may authorize a Marketing Affiliate to perform its scheduling or nominations on the Transmission Provider. The Commission does not intend to discourage these types of services. Customers may use an affiliate to provide it these services. The customer must provide the Transmission Provider, in writing, permission for that entity to act on its behalf and/or authorize the Transmission Provider to share the customer's information with that entity.

217. However, the Commission will adopt BP's second proposal. If a transmission customer voluntarily

[108] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), III FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, 106 FERC ¶ 61,220 (2004).

[109] Final Rule at P 156.

authorizes the Transmission Provider to share the customer's information with a Marketing or Energy Affiliate, the Transmission Provider is required to post notice on the OASIS or Internet website of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

218. Finally, customers who feel "coerced" can file a complaint with the Commission or seek informal resolution through the Enforcement Hotline.

v. Posting of Shared Information Requirement

Final Rule

219. Section 358.5(b)(3) provides that, if a Transmission Provider's employee discloses information in a manner contrary to the Standards of Conduct requirements of §§ 358.5(b)(1) and (2) (the information sharing and disclosing prohibitions), the Transmission Provider must immediately post this information on its OASIS or Internet website.

Requests for Rehearing and/or Clarification and Commission Conclusions

220. El Paso, INGAA and Shell Gas argue that it will be impractical for pipelines to post contemporaneously the numerous intra-day communications and information shared and disclosed between a pipeline and its Marketing or Energy Affiliates. El Paso argues that operational information by necessity must be communicated in real-time and continuously between operators of interconnected natural gas systems. They argue further that it is inefficient for the Transmission Provider to post and report each time its gas control personnel communicates with gatherers. They also argue that this posting requirement will harm Energy Affiliates by disclosing sensitive information that might reveal the marketing strategies of the Energy Affiliate. NiSource requests that the Commission clarify that any public utility that no longer maintains an OASIS must post the shared information on its website.

221. The petitioners' arguments assume that the crucial operating exemption does not allow them to share various day-to-day communications with interconnecting affiliates, and, thus, they are required to post information relating to those communications on the OASIS or Internet website under § 358.5(b)(3).

222. As discussed above, the Transmission Provider may share certain information with its Energy Affiliates covered under § 358.5(b)(8) without triggering the posting requirements under § 358.5(b)(3). The clarification above addresses the petitioners' concerns about voluminous intra-day communications.

223. The Commission emphasizes that if a Transmission Provider does disclose information contrary to the Standards of Conduct, it must immediately post that information on the OASIS or Internet website. Contemporaneous posting and transparency are one of the most effective deterrents to favoritism, undue discrimination and anti-competitive conduct.

224. Finally, we clarify that, in the event a Transmission Provider does not maintain an OASIS, it must post the shared information on an Internet website.

J. Discounts

Final Rule

225. Section 358.5(d) requires a Transmission Provider to post on its OASIS or Internet website, any offer of a discount at the conclusion of negotiations, "contemporaneous with the time that the offer is contractually binding." In the Final Rule, the Commission stated that this result balances the importance of equal and timely access to discount information with clarity. The Commission noted that the former requirement to post gas discounts within 24 hours of gas flow[110] was too late to afford a non-affiliated competitor the opportunity to negotiate a comparable deal in today's fast-paced markets.

Requests for Rehearing and/or Clarification and Commission Conclusions

226. INGAA, NiSource and National Fuel-Supply separately request the Commission to clarify that in the context of a precedent agreement, the requirement to post discounts should not occur until the conditions in the precedent agreement are satisfied. They argue that to hold otherwise would place a chilling effect on contract negotiations and note that a precedent agreement is not binding until all of the conditions are met.

227. The Commission denies the proposal to delay the posting requirement for discounts of precedent agreement until all of the terms and conditions are met. This would be an exemption that would swallow the rule because the purpose of the timing of the posting requirement is that it provides time for a non-affiliated competitor to negotiate a comparable discount. The Commission clarifies that a Transmission Provider must comply with the discount posting requirement at the time a precedent agreement containing the discount has been reached.

228. Shell Offshore requests that the Commission clarify whether "contractually binding" means legally executed, asserting that the "conclusion of negotiations" is not a defined term or term of art. NiSource requests that the Commission clarify that the posting of discounts is not required until both parties are bound to the contract. NiSource argues that the posting should not be made at the time of the offer and that under contract law it could be argued that that a Transmission Provider could be bound when it extends the discount offer.

229. The Commission clarifies that the time the offer is contractually binding means the time that both parties are bound.

230. NiSource also asks the Commission to clarify that the posting requirements in Order No. 637 remain applicable to discounts given to non-affiliated customers. Under Order No. 637, discounts must be posted prior to the first nomination on a new or amended contract. The Commission clarifies that the Final Rule does not affect the posting requirements for non-affiliate discounts under Order No. 637.

K. Accounting Treatment for Compliance Costs

231. The Final Rule was silent on the accounting treatment to be used for compliance costs.

232. Xcel requests that the Commission allow Transmission Providers to record their compliance costs as regulatory assets in Account No. 182.3, Other Regulatory Assets, with amortization of the compliance costs over a period of years in future FERC jurisdictional rates. Xcel argues that anticipated compliance costs will be substantial and are not reflected in its currently effective transmission rates. Allowing such accounting treatment under the Uniform System of Accounts, Xcel argues, will promote compliance by providing jurisdictional entities a means to recover the initial and ongoing compliance costs over time. Xcel notes as support for its position that the Commission allowed regulatory asset treatment for market start-up costs incurred by the Midwest Independent System Operator (MISO).

233. The Commission denies rehearing. The Commission will not make a generic determination that

[110] Former 18 CFR 161.3(h)(2) of the Commission's regulations.

regulatory asset accounting treatment is appropriate for the costs incurred to implement the Standards of Conduct, nor agree to allow the amortization of those costs over a period of years in a Transmission Provider's future FERC jurisdictional rates. The Commission's determination in *MISO* does not support Xcel's position. In *MISO*, the Commission responded to concerns about the ability of member public utilities to recover costs billed by MISO but incurred by the public utilities. Here the issue is costs directly incurred by a Transmission Provider to operate and administer its transmission system. The costs at issue here are like the costs of implementing business practice standards, which are not treated as regulatory assets.

L. Request for Extension of Time

234. On March 22, 2004, EEI submitted a motion for an extension of time for compliance with Order No. 2004. EEI argues that the Commission should defer the deadline for compliance with Order No. 2004 until September 1, 2004. Alternatively, EEI urges the Commission to consider extending the time for training of employees under § 358.4(e)(5) and the posting requirements under § 358.4(b) until September 1, 2004. EEI argues that if a rehearing order changes the rules after training has occurred, Transmission Providers would have to revise their training programs or modules. The Commission grants EEI's request to extend the deadline for compliance with Order No. 2004. *See* 18 CFR 358.4(e)(2).

M. Typographical Corrections

235. The Commission is also making some corrections to the regulatory text to reflect the term "Marketing Affiliate," and to correct typographical errors.

N. Applicability of the Standards of Conduct to Newly Formed Transmission Providers

236. The Commission will also address the issue of when a newly created Transmission Provider becomes subject to part 358 Standards of Conduct. The Commission clarifies that the Standards of Conduct apply to any Transmission Provider, including those which have not yet begun operations. The statutory requirement that Transmission Providers act in a manner that is not unduly discriminatory or preferential applies before the Transmission Provider begins to provide transmission services. For example, it has become a common practice for project sponsors of new interstate natural gas pipeline projects to hold open seasons to reach the largest economically feasible market for their enterprises, and to avoid creating perceptions of undue discrimination during project development. As a general principle, the Commission believes that new Transmission Providers should take the appropriate steps to comply with the Standards of Conduct as soon as practicable.

237. A newly-formed company will, of course, take the requirements of Part 358 into account when establishing its initial corporate organization. However, the Commission recognizes that some aspects of the Standards of Conduct may have no meaningful applicability until the company has been staffed and begins to perform transmission functions, such as soliciting business, or negotiating contracts. To the extent a prospective Transmission Provider is unsure of the adequacy of its compliance with the Standards of Conduct, it may seek specific guidance from the Commission.

IV. Document Availability

238. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page *http://www.ferc.gov* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

239. From the Commission's home page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

240. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support (by phone at (866) 208–3676 (toll free) or for TTY, contact (202) 502–8659, or by e-mail at *FERCOnlineSupport@ferc.gov*.

V. Effective Date

241. The revisions in this order on rehearing will be effective June 1, 2004.

List of Subjects in 18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioners Brownell and Kelliher dissenting in part with separate statements attached.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends Part 358, Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 358—STANDARDS OF CONDUCT

■ 1. The authority citation for Part 358 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 358.1, paragraph (c), the word "§ 385.5(b)" is removed and the word "§ 358.5(b)" is inserted in its place.

■ 3. Section 358.2 is revised as follows:

§ 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independent from the employees of its Marketing and Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit its Marketing or Energy Affiliates.

4. In § 358.3, paragraph (a)(3) is added, paragraph (b)(1) is revised, paragraph (d)(5) is redesignated as (d)(6), a new paragraph (d)(5) is added, redesignated paragraphs (d)(6)(ii) and (d)(6)(v) are revised and a new paragraph (k) is added to read as follows:

§ 358.3 Definitions.

(a) * * *

(3) A Transmission Provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive rate payers and no market power.

(b) * * *

(1) Another person which controls, is controlled by or is under common control with, such person. An Affiliate includes a division that operates as a functional unit, and

* * * * *

(d) * * *

(5) An LDC division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate.

(6) * * *

(ii) An affiliated Transmission Provider or an interconnected foreign affiliated natural gas pipeline that is engaged in natural gas transmission activities which are regulated by the state, provincial or national regulatory boards of the foreign country in which such facilities are located.

* * * * *

(v) A State-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system customers, and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system customer sales and to engage in de minimus sales necessary to remaining in balance under applicable pipeline tariff requirements.

* * * * *

(k) *Marketing Affiliate* means an Affiliate as that term is defined in § 358.3(b) or a unit that engages in marketing, sales or brokering activities as those terms are defined at § 358.3(e).

5. In § 358.4, paragraphs (a)(5) and (a)(6) are added and paragraphs (b)(1), (b)(2), (b)(3)(i), (b)(3)(iii), (b)(3)(iv), (b)(3)(v), (c), (e)(3) and (e)(5) are revised to read as follows:

§ 358.4 Independent functioning.

(a) *Separation of functions.*

* * * * *

(5) Transmission Providers are permitted to share with their Marketing or Energy Affiliates senior officers and directors who are not "Transmission Function Employees" as that term is defined in § 358.3(j). A Transmission Provider may share transmission information covered by § 358.5(a) and (b) with its senior officers and directors provided that they do not participate in directing, organizing or executing transmission system operations or marketing functions; or act as a conduit to share such information with a Marketing or Energy Affiliate.

(6) Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity Functions with their Marketing and Energy Affiliates.

(b) * * *

(1) A Transmission Provider must post the names and addresses of Marketing and Energy Affiliates on its OASIS or Internet website.

(2) A Transmission Provider must post on its OASIS or Internet website, as applicable, a complete list of the facilities shared by the Transmission Provider and its Marketing and Energy Affiliates, including the types of facilities shared and their addresses.

(3) * * *

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates;

* * * * *

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(b)(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the potential merger is announced.

* * * * *

(c) *Transfers.* Employees of the Transmission Provider, Marketing or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the Standards of Conduct. Notices of any employee transfers between the Transmission Provider, on the one hand, and the Marketing or Energy Affiliates, on the other, must be posted on the OASIS or Internet website, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (*i.e.*, on behalf of the Transmission Provider, Marketing or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet website, as applicable, for 90 days.

* * * * *

(e) * * *

(2) Each Transmission Provider must be in full compliance with the Standards of Conduct by September 1, 2004.

(3) The Transmission Provider must post on the OASIS or Internet web site, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by September 1, 2004 or within 30 days of becoming subject to the requirements of part 358.

* * * * *

(5) Transmission Providers shall require all of their employees to attend training and sign an affidavit certifying that they have been trained regarding the standards of conduct requirements. Electronic certification is an acceptable substitute for an affidavit.

* * * * *

6. In § 358.5, paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (b)(4), (b)(7), (b)(8), (c)(5) and (d) are revised to read as follows:

§ 358.5 Non-discrimination requirements.

(a) * * *

(1) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) * * *

(1) An employee of the Transmission Provider may not disclose to its Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar

information) through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet website that is not contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from non-affiliated transmission customers or potential non-affiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

* * * * *

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a Marketing or Energy Affiliate. If a non-affiliated customer authorizes the Transmission Provider to share its information with a Marketing or Energy Affiliate, the Transmission Provider must post notice on the OASIS or Internet website of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

* * * * *

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of §§ 358.5(b)(1) and (2) with a marketing or Energy Affiliate. A Transmission Provider may share information covered by §§ 358.5(b)(1) and (2) with employees permitted to be shared under §§ 358.4(a)(4), (5) and (6) provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(8) A Transmission Provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliates.

(c) * * *

(5) The Transmission Provider may not, through its tariffs or otherwise, give preference to its Marketing or Energy Affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) *Discounts.*

Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet website contemporaneous with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet website for 60 days from the date of posting.

Note: The following Attachments will not be published in the *Code of Federal Regulations.*

Attachment A—List of Petitioners Requesting Rehearing or Clarification or Submitting Comments

AGS Oil and Gas Ventures, Inc. (AGS)
Allegheny Energy, Inc. (Allegheny)
Alliance Pipeline, LP (Alliance)
American Gas Association (AGA)
American Public Gas Association (APGA)
American Public Power Association (APPA)
BP America Production and BP Energy Company (BP)
Canadian Association of Petroleum Producers (CAPP)
C and E Operators, Inc. (C&E)
C and L Oil and Gas Corp (C&L)
Calpine Corporation (Calpine)
CenterPoint Energy Gas Transmission Company (CenterPoint)
Cinergy Services, Inc. (Cinergy)
Dominion Resources, Inc. (Dominion)
Duquesne Light Company (Duquesne)
Duke Energy Corporation (Duke Energy)
Edison Electric Institute (EEI)
El Paso Corporation (El Paso)
Empire District Electric Co. (Empire)
Enbridge, Inc. (Enbridge)
Encana Gas Storage Inc. (Encana)
Entergy Services, Inc. (Entergy)
Fairview Production Co.
Florida Power and Light (FPL)
GeoVest Incorporated (GeoVest)
Independent Oil & Gas Association of West Virginia (IOGA-WV)
Independent Petroleum Association of America (IPAA)
Independent Producers Association (IPA)
INOK Investments (INGK)
Interstate Natural Gas Association of America (INGAA)
Jack Forrester
Kansas City Power and Light (KCPL)
Kinder Morgan Interstate Pipelines (Kinder Morgan Pipelines)
LG&E Energy Corporation and Kentucky Utilities Company (LG&E/KU)
National Association of State Utility Consumer Advocates (NASUCA)
National Fuel Gas Distribution Corporation (National Fuel—Distribution)
National Fuel Gas Supply Corporation (National Fuel—Supply)
National Grid USA (National Grid)
National Rural Electric Cooperative Association (NRECA)
Natural Gas Supply Association (NGSA)
New York State Public Service Commission (New York State Department)
NICOR Gas (NICOR)
NiSource, Inc. (NiSource)
Northwest Natural Gas Company and Kelso Beaver Pipeline Company (NW Natural and Kelso Beaver)
ONEOK
Pennsylvania Office of Consumer Advocate (PA-OCA)
Plymouth Resources, Inc. (Plymouth)
Portland General Electric (PGE)
Process Gas Consumers (PGC)
PSEG Companies (PSEG)
Questar Pipeline Co., Questar Gas Co., Questar Regulated Services Co. (Questar)
Saltville Gas Storage Co., LLC (Saltville)
SCG Pipeline Inc. (SCG)
Shell Gas Transmission, LLC (Shell Transmission)
Shell Offshore, Inc. (Shell Offshore)
South Carolina Electric & Gas Co. (SCE&G)
Southern Company Services, Inc. (Southern)
Southwest Gas Corporation (Southwest Gas)
Texas Pipeline Association (Texas Pipeline Association)
Transmission Access Policy Study Group (TAPS)
Transmission Dependent Utilities Systems Transmission Group
USG Pipeline Company, B–R Pipeline and U.S. Gypsum Company (USG and B–R)
Utah Associated Municipal Power Systems (Utah Munis)
Williams Companies (Williams)
Williston Basin Interstate Pipeline Company (Williston Basin)
Wisconsin Public Service Corp. and Upper Peninsula Power Co. (WPSC and UPPC)
XCEL Energy Services, Inc. (Xcel)

Attachment B—Staff Analysis of Interstate Natural Gas Pipeline Index of Customers Data

Staff compiled index of customers data from all 87 pipelines for which it was available for the October 1, 2003 filing.

Staff identified 63 pipelines which had reported affiliated transactions. Staff noted that 5 of these pipelines had contracts only with Transmission Provider affiliates and removed these from the study as a special category. The remaining 58 pipelines were then examined in more detail.

Staff then identified the type of affiliation, *e.g.*, marketer, LDC, producer, for each customer from publicly available information.

The table "Summary of Natural Gas Pipeline Affiliate Information" shows summary affiliate information by pipeline and type of affiliation. Totals are shown also for all 58 pipelines examined. The information was derived from the detailed affiliated customer data as follows:

—Table rows labeled "Affil Vols (MMBtu)" are simply total volumes by affiliation type for individual pipelines or the group of 58

pipelines aggregated from the data for individual affiliated customers.

—Table rows for each pipeline labeled "Pct of P/L Total Vols" are the affiliate volumes shown divided by the total contracted volumes for the pipeline.

—The table row labeled "Pct of Relevant PL Tot Vols (WA)" for the group of 58 pipelines are the affiliate volumes shown divided by the total contracted volumes only for those pipelines that have affiliated customers of the type shown in that column of the table. This is a weighted average.

—The Table row labeled "Pct of Relevant PL Tot Vols (SA) is the simple average of the "% of P/L Total Vols" figures for each pipeline with data in that column.

Some pipelines have more than one type of affiliate, and would be included in the summary information compiled under each affiliate type.

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Summery of Natural Gas Pipeline Affiliete Informetion
Source: Oct 2003 Index of Customers

08:46 Fridey, April 2, 2004

Pipeline	Item	Transportation Affiliate	Storege Affiliate	Transpo Marketing Affiliete	Storage Marketing Affiliete	Transpo Producer Affiliete	Storage Producer Affiliete	Transpo LDC Affiliate	Storege LDC Affiliete
All Pipelines (58 PLs)	Affil Vols (MMBtu)	21,842,719	345,328,645	6,737,835	102,025,929	2,695,111	7,435,818	13,246,318	252,288,581
	% of Relevent PL Tot Vols (SA)	38	57	19	44	37	11	46	48
	% of Relevent PL Tot Vols (WA)	17	34	6	15	9	B	35	32
ALLIANCE PIPELINE L.P.	Affil Vols (MMBtu)	188,559	.	188,559	.	.	.	.	.
	% of P/L Total Vols	13	.	13	.	.	.	.	.
ANR PIPELINE COMPANY	Affil Vols (MMBtu)	78,000	.	21,000	.	.	.	.	.
	% of P/L Total Vols	1	.	0	.	.	.	.	.
CARNEGIE INTERSTATE PIPELINE CO.	Affil Vols (MMBtu)	13,000	.	.	.	.	.	13,000	.
	% of P/L Totel Vols	67	.	.	.	.	.	57	.
CENTERPOINT ENERGY GAS TRANSMISSI	Affil Vols (MM8tu)	1,249,309	17,643,333	32,929	.	20,000	.	1,195,380	17,543,333
	% of P/L Totel Vols	39	100	1	.	1	.	37	100
CENTRAL NEW YORK OIL ANO GAS COMP	Affil Vols (MMBtu)	.	11,900,000	.	11,900,000	.	.	.	.
	% of P/L Totel Vols	.	100	.	100	.	.	.	.
CHANOELEUR PIPE LINE COMPANY	Affil Vols (MM8tu)	210,000	.	.	.	210,000	.	.	.
	% of P/L Total Vols	77	.	.	.	77	.	.	.
CLEAR CREEK STORAGE COMPANY L.L.	Affil Vols (MM8tu)	.	8,000,000	.	8,000,000	.	.	.	.
	% of P/L Totel Vols	.	100	.	100	.	.	.	.
COLORAOO INTERSTATE GAS COMPANY	Affil Vols (MMBtu)	100,000	.	100,000	.	.	.	.	.
	% of P/L Totel Vols	3	.	3	.	.	.	.	.
COLUMBIA GAS TRANSMISSION CORPORA	Affil Vols (MM8tu)	5,411,834	126,689,688	3,338	.	567	.	5,395,929	126,689,688
	% of P/L Totel Vols	42	61	0	.	0	.	42	61
COLUMBIA GULF TRANSMISSION COMPAN	Affil Vole (MM8tu)	587,039	.	10,000	.	.	.	577,039	.
	% of P/L Totel Vole	18	.	0	.	.	.	17	.
CROSSROAOS PIPELINE COMPANY	Affil Vole (MM8tu)	8,700	.	8,700	.	.	.	.	.
	% of P/L Total Vols	9	.	9	.	.	.	.	.
OAUPHIN ISLANO GATHERING PARTNERS	Affil Vole (MM8tu)	28,440	.	28,440	.	28,440	.	.	.
	% of P/L Totel Vols	14	.	14	.	14	.	.	.
OESTIN PIPELINE COMPANY L.L.C.	Affil Vols (MM8tu)	301,800	.	.	.	301,800	.	.	.
	% of P/L Total Vols	53	.	.	.	63	.	.	.
OOMINION COVE POINT LNG LP	Affil Vols (MM8tu)	95,000	.	95,000	.	.	.	.	.
	% of P/L Total Vols	-7	.	7	.	.	.	.	.

Summary of Natural Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

08:46 Friday, April 2, 2004

Pipeline	Item	Transportation Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
DOMINION TRANSMISSION INC.	Affil Vols (MMBtu)	1,515,633	44,749,533	211,530	5,970,000	.	.	1,368,503	38,779,533
	% of P/L Total Vols	28	16	4	2	.	.	25	14
EASTERN SHORE NATURAL GAS COMPANY	Affil Vols (MMBtu)	45,455	255,803	.	.	.	.	45,455	255,803
	% of P/L Total Vols	41	74	.	.	.	.	41	74
EGAN HUB PARTNERS L.P.	Affil Vols (MMBtu)	.	3,000,000	.	3,000,000	.	.	.	.
	% of P/L Total Vols	.	18	.	18	.	.	.	.
EL PASO NATURAL GAS COMPANY	Affil Vols (MMBtu)	132,112	.	132,112	.	.	.	.	.
	% of P/L Total Vols	2	.	2	.	.	.	.	.
ENBRIDGE PIPELINES (ALATENN) L.L.	Affil Vols (MMBtu)	700	.	700	.	.	.	.	.
	% of P/L Total Vols	1	.	1	.	.	.	.	.
EQUITRANS L.P.	Affil Vols (MMBtu)	579,920	15,006,619	34,985	3,859,049	206,000	4,181,818	338,935	6,965,752
	% of P/L Total Vols	89	63	5	16	31	18	52	29
FLORIDA GAS TRANSMISSION	Affil Vols (MMBtu)	21,000	.	21,000	.	.	.	.	.
	% of P/L Total Vols	1	.	1	.	.	.	.	.
GARDEN BANKS GAS PIPELINE LLC	Affil Vols (MMBtu)	209,102	.	.	.	209,102	.	.	.
	% of P/L Total Vols	76	.	.	.	76	.	.	.
GRANITE STATE GAS TRANSMISSION I	Affil Vols (MMBtu)	105,400	.	.	.	.	.	105,400	.
	% of P/L Total Vols	92	.	.	.	.	.	92	.
GREAT LAKES GAS TRANSMISSION LIMI	Affil Vols (MMBtu)	93,540	.	93,540	.	.	.	.	.
	% of P/L Total Vols	2	.	2	.	.	.	.	.
GUARDIAN PIPELINE L.L.C.	Affil Vols (MMBtu)	1,302,500	.	2,500	.	.	.	1,300,000	.
	% of P/L Total Vols	99	.	0	.	.	.	99	.
GULF SOUTH PIPELINE COMPANY LP	Affil Vols (MMBtu)	340,000	26,865,998	340,000	26,865,998	.	.	.	.
	% of P/L Total Vols	14	90	14	90	.	.	.	.
KINDER MORGAN INTERSTATE GAS TRAN	Affil Vols (MMBtu)	171,470	2,179,485	.	.	.	.	5,085	.
	% of P/L Total Vols	21	54	.	.	.	.	1	.
KO TRANSMISSION COMPANY	Affil Vols (MMBtu)	218,000	.	218,000	.	.	.	.	.
	% of P/L Total Vols	80	.	80	.	.	.	.	.
MARITIMES & NORTHEAST PIPELINE L	Affil Vols (MMBtu)	199,335	.	199,335	.	185,335	.	.	.
	% of P/L Total Vols	30	.	30	.	28	.	.	.

Summary of Natural Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

08:46 Friday, April 2, 2004

Pipeline	Item	Transportation Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
MIDWESTERN GAS TRANSMISSION	Affil Vols (MMBtu)	1,600	.	1,600	.	.	.	.	.
	% of P/L Total Vols	0	.	0	.	.	.	.	.
MIGC INC.	Affil Vols (MMBtu)	90,000	.	90,000	.	.	.	.	.
	% of P/L Total Vols	69	.	69	.	.	.	.	.
MISSISSIPPI CANYON GAS PIPELINE	Affil Vols (MMBtu)	558,518	.	.	.	558,518	.	.	.
	% of P/L Total Vols	85	.	.	.	85	.	.	.
MISSISSIPPI RIVER TRANSMISSION CO	Affil Vols (MMBtu)	53,710	1,725,989	12,887	650,444	.	.	40,823	1,075,545
	% of P/L Total Vols	3	5	1	2	.	.	2	3
MOJAVE PIPELINE COMPANY	Affil Vols (MMBtu)	24,000	.	24,000	.	.	.	.	.
	% of P/L Total Vols	6	.	6	.	.	.	.	.
NATIONAL FUEL GAS SUPPLY CORPORAT	Affil Vols (MMBtu)	1,252,530	34,650,281	73,882	3,255,000	73,882	3,255,000	1,178,648	31,395,281
	% of P/L Total Vols	57	51	3	5	3	5	53	48
NAUTILUS PIPELINE COMPANY LLC	Affil Vols (MMBtu)	277,648	.	.	.	277,648	.	.	.
	% of P/L Total Vols	74	.	.	.	74	.	.	.
NORTHERN NATURAL GAS COMPANY	Affil Vols (MMBtu)	1,660,004	11,314,460	1,660,004	11,314,460	.	.	.	.
	% of P/L Total Vols	10	17	10	17	.	.	.	.
NORTHWEST PIPELINE CORPORATION	Affil Vols (MMBtu)	15,635	.	15,636	.	15,635	.	.	.
	% of P/L Total Vols	0	.	0	.	0	.	.	.
OZARK GAS TRANSMISSION L.L.C.	Affil Vols (MMBtu)	197,380	.	197,380	.	.	.	.	.
	% of P/L Total Vols	85	.	85	.	.	.	.	.
PAIUTE PIPELINE COMPANY	Affil Vols (MMBtu)	81,100	400,571	.	.	.	.	81,100	400,571
	% of P/L Totel Vols	51	82	.	.	.	.	51	82
PANHANDLE EASTERN PIPE LINE COMPA	Affil Vols (MMBtu)	27,880	1,471,800	.	.	.	.	27,880	1,471,800
	% of P/L Total Vols	1	2	.	.	.	.	1	2
PG&E GAS TRANSMISSON NORTHWEST CO	Affil Vols (MMBtu)	654,668	.	609,968	.	.	.	.	.
	% of P/L Total Vols	21	.	20	.	.	.	.	.
PINE NEEDLE LNG COMPANY LLC	Affil Vols (MMBtu)	.	3,255,000	.	3,255,000	.	.	.	.
	% of P/L Total Vols	.	79	.	79	.	.	.	.
PORTLAND NATURAL GAS TRANSMISSION	Affil Vols (MMBtu)	80,000	.	15,000	.	.	.	.	.
	% of P/L Total Vols	28	.	7	.	.	.	.	.

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Summary of Naturel Gas Pipeline Affiliate Information
Source: Oct 2003 Index of Customers

08:46 Friday, April 2, 2004

Pipeline	Item	Transportetion Affiliate	Storage Affiliate	Transpo Marketing Affiliate	Storage Marketing Affiliate	Transpo Producer Affiliate	Storage Producer Affiliate	Transpo LDC Affiliate	Storage LDC Affiliate
QUESTAR PIPELINE COMPANY	Affil Vols (MMBtu)	929,080	18,412,368	929,080	16,412,358	.	.	898,902	15,347,368
	% of P/L Total Vols	61	31	81	31	.	.	59	29
SABINE PIPE LINE LLC	Affil Vols (MMBtu)	54,000	.	54,000	.	50,000	.	.	.
	% of P/L Total Vols	72	.	72	.	87	.	.	.
TENNESSEE GAS PIPELINE COMPANY	Affil Vols (MMBtu)	213,585	8,403,610	161,500	5,403,610	.	.	.	.
	% of P/L Total Vols	3	8	2	8	.	.	.	.
TEXAS EASTERN TRANSMISSION LP	Affil Vols (MMBtu)	40,400	.	35,400	.	.	.	.	.
	% of P/L Total Vols	1	.	1	.	.	.	.	.
TOTAL PEAKING SERVICES LLC	Affil Vols (MMBtu)	72,000	1,140,000	72,000	1,140,000	.	.	.	.
	% of P/L Total Vols	100	100	100	100	.	.	.	.
TRANSCOLORADO GAS TRANSMISSION CO	Affil Vols (MMBtu)	125,000	.	.	.	125,000	.	.	.
	% of P/L Total Vols	18	.	.	.	18	.	.	.
TRANSCONTINENTAL GAS PIPELINE COR	Affil Vols (MMBtu)	457,630	.	457,630	.	.	.	.	.
	% of P/L Total Vols	7	.	7	.	.	.	.	.
TRANSWESTERN PIPELINE COMPANY	Affil Vols (MMBtu)	25,000	.	25,000	.	.	.	.	.
	% of P/L Total Vols	0	.	0	.	.	.	.	.
TUSCARORA GAS TRANSMISSION COMPAN	Affil Vols (MMBtu)	127,101	.	127,101	.	.	.	.	.
	% of P/L Total Vols	77	.	77	.	.	.	.	.
VECTOR PIPELINE L.P.	Affil Vols (MMBtu)	758,000	.	405,000	.	.	.	265,000	.
	% of P/L Total Vols	64	.	34	.	.	.	21	.
VENICE GATHERING SYSTEM L.L.C.	Affil Vols (MMBtu)	297,010	.	.	.	297,010	.	.	.
	% of P/L Total Vols	40	.	.	.	40	.	.	.
WESTGAS INTERSTATE INC.	Affil Vols (MMBtu)	11,372	.	.	.	.	.	11,372	.
	% of P/L Total Vols	85	.	.	.	.	.	85	.
WILLISTON BASIN INTERSTATE PIPELI	Affil Vols (MMBtu)	425,866	12,364,007	19,000	.	.	.	408,856	12,364,007
	% of P/L Total Vols	92	100	4	.	.	.	87	100
WYOMING INTERSTATE COMPANY LTD.	Affil Vols (MMBtu)	125,174	.	.	.	126,174	.	.	.
	% of P/L Total Vols	7	.	.	.	7	.	.	.

Brownell, Commissioner, dissenting in part.

1. For the reasons set forth in my dissent in part to Order No. 2004, Standards of Conduct for Transmission Providers, 68 FR 69134 (Dec 11, 2003), III FERC Stats. & Regs. ¶31,155 (Nov. 25, 2003), I would have retained the existing exemptions under Order No. 497 for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines.

2. For these reasons, I respectfully dissent in part.

Nora Mead Brownell,
Commissioner.

Kelliher, Commissioner, dissenting in part:

I am writing separately to explain my reasoning with respect to the Standards of Conduct Final Rule. I support the Rehearing Order, but do so with some discomfort, because I believe the rehearing order improves what is a flawed Final Rule.

In my view, the flaw in the Standards of Conduct Final Rule is the lack of record evidence to support expanding the scope beyond Marketing Affiliates. The basis for the rule is the observation that "significant changes have occurred [in the electricity and gas industries] since the standards of conduct were first adopted," [1] that there has been a proliferation of energy affiliates,[2] and a suspicion that affiliate abuse is occurring in the dealings between Transmission Providers and Energy Affiliates.

I agree significant changes have occurred in the electricity and gas industries, and pipelines and utilities do have a wider array of energy affiliates than previously. However, suspicion is not a sufficient basis for expanding the scope of Standards of Conduct beyond Marketing Affiliates.

The Final Rule and the Rehearing Order cite a number of instances where affiliate abuse has occurred. The cases cited by the orders all relate to preference in dealings between a Transmission Provider and a Marketing Affiliate, not other Energy Affiliates. I do not see how a record of affiliate abuse limited to Marketing Affiliates argues in favor of expanding the scope of the rule beyond Marketing Affiliates. To my mind, it argues in favor of keeping the scope of the rule where it was. Indeed, there appears to be no factual basis to support expanding the scope beyond Marketing Affiliates.

With respect to the discrete policy calls made in the rehearing order, I largely agree with them. I would have gone further in some areas in limiting application of the Standards of Conduct. In particular, I would have expanded the scope of the local distribution company exemption to include local distribution companies that make no off-system sales on affiliated pipelines. The prospect of affiliate abuse involving off-system sales on nonaffiliated pipelines appears remote. Of course, there is no record of affiliate abuse involving such sales.

Commission policy has promoted off-system sales in order to encourage greater efficiency and enable local distribution companies to lower their costs. In my view, expanding the local distribution company exemption would have been consistent with this policy direction. The Rehearing Order notes that National Fuel-Distribution made $63 million in off-system sales. It is worth observing that all of those sales were made on nonaffiliated pipelines.

In addition, I would have granted an exemption to Part 157 pipelines. These pipelines serve one or few customers, and the prospect of affiliate abuse appears remote. There certainly is no record of affiliate abuse to merit applying the Standards of Conduct to Part 157 pipelines.

Finally, I also would have granted the rehearing request by The Williams Companies to clarify the role of senior officers and directors in managing their companies in a manner consistent with their fiduciary duties and principles of sound corporate governance. Under the Final Rule, senior officers and directors may be shared between a transmission business unit and the marketing unit or energy affiliate only if they "do not engage in transmission functions." [3] Commission case law suggests that a senior officer or director who approves even a limited number of transactions or investments would become an "operating" employee of a Transmission Provider, and could not qualify as a shared employee. Currently, decisions on large transactions and investments are often reserved to senior corporate officers and directors. The Final Rule forces these corporate officers to make a Hobson's choice: either they continue to make these decisions, and thereby become construed as operating employees of a Transmission Provider, and are thereby disqualified to serve as a shared employee, with all the resultant limitations on information sharing, or they divest themselves of responsibility to make these decisions. I believe the Final Rule may impede the ability of corporate management to engage in informed decisionmaking, and runs counter to principles of sound corporate governance.

Two years ago, the U.S. Court of Appeals for the District of Columbia Circuit overturned a Commission order extending application of Standards of Conduct beyond the marketing affiliates of Dominion Resources. In part, the Court was concerned that doing so would "destroy[] * * * [corporate] efficiencies" without justification.[4] I have some of the same concerns about the Final Rule.

To be clear, I support the goal of the Standard of Conduct Final Rule, namely the prevention of unduly discriminatory behavior. However, for the reasons stated above, I do not believe the Final Rule advances this goal.

Joseph Kelliher.

[FR Doc. 04–9357 Filed 4–28–04; 8:45 am]
BILLING CODE 6717–01–U

[1] Standards of Conduct for Transmission Providers, 68 FR 69,134 (December 11, 2003), III FERC Stats. & Regs., ¶ 31,155 at ¶ 6 (Nov. 25, 2003).

[2] *Id.*

[3] *Id.* at ¶ 104.

[4] *Dominion Resources, Inc.* v. *FERC,* 286 F.3d 586, 593 (DC Cir. 2002).

Federal Register

Thursday,
April 29, 2004

Part III

Department of Commerce

15 CFR Parts 770 and 774
December 2003 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements; and Interpretation Regarding NUMA Technology; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 770 and 774

[Docket No. 040414115–4115–01]

RIN 0694–AD00

December 2003 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements; and Interpretation Regarding NUMA Technology

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement focuses on implementation of effective export controls on strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 2003 meeting. In addition, this rule adds a paragraph to Interpretation 12 "Computers" to provide guidance as to how to calculate the Composite Theoretical Performance (CTP) for computer systems with "non-uniform memory access" (NUMA) architecture, and to define NUMA.

DATES: *Effective Date:* This rule is effective April 29, 2004.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or e-mail: *scook@bis.doc.gov.*

For questions of a technical nature contact:

Category 1: Bob Teer 202–482–4749

Category 2: George Loh 202–482–3570

Category 3: Dave Ports 202–482–9164 or Brian Baker 202–482–9135

Category 4 and 5 part 1: Joe Young 202–482–4197

Category 5 part 2: Norm La Croix 202–482–4439

Category 6: Chris Costanzo (night vision) 202–482–0718 or Wayne Hovis (lasers) 202–482–1837

Categories 7 and 8: Dan Squire 202–482–3710

Categories 8 and 9: Gene Christensen 202–482–2984

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with December 2003 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 1—Materials, Chemicals, "Microorganisms," and Toxins

- ECCN 1A005 is amended by:

(a) Revising note 2 in the Related Controls paragraph and moving it to a Note in the Items paragraph in the List of Items Controlled section;

(b) Moving note 3 in the Related Controls paragraph to a Note in the Items paragraph in the List of Items Controlled section; and

(c) Adding a new note 2 in the Related Controls paragraph of the List of Items Controlled section to point to a related control in ECCN 1C010 concerning the "fibrous or filamentary materials" used in the manufacture of body armor.

Category 2—Materials Processing

- ECCN 2B001 is amended by:

(a) Revising the heading to add "specially designed components" (inserting "and specially designed components" in the 2B001 heading before the words "as follows" simply makes the heading consistent with the inclusion of "and specially designed components therefor" in 2B001.f and does not impose a new license requirement for specially designed components for the other 2B001 sub-items); and

(b) Adding a new note 3 to the beginning of the Items paragraph in the List of Items Controlled section that reads, "A machine tool having at least two of the three turning, milling or grinding capabilities (*e.g.*, a turning machine with milling capability), must be evaluated against each applicable entry 2B001.a., b. or c."

- ECCN 2B002 is added to the CCL to control exports and reexports of "Numerically controlled machine tools using a magnetorheological finishing (MRF) process" for national security (NS) and anti-terrorism (AT) reasons.
- ECCN 2B006 is amended by revising the note for 2B006.b.2 to provide that "laser light" is an example of "collimated light".
- ECCN 2B206 is amended by adding a paragraph 2B206.c that will duplicate text from 2B006.b.2, without, however, the "laser light" example of "collimated light" in the note, because the "laser light" example has not been adopted by the Nuclear Supplier's Group.
- ECCN 2D002 is amended by adding a second note to the Items paragraph of the List of Items Controlled section to read, "2D002 does not control 'software' for items controlled by 2B002. *See* 2D001 for control of 'software' for items controlled by 2B002."
- Category 2E—Materials Processing "Notes to Table on Deposition Techniques" is amended by adding to the end of note 17, "or molds, for casting or molding of plastics, manufactured from alloys containing less than 5% beryllium."

Category 3—Electronics

- ECCN 3A001 is amended by:

(a) Revising the parameter "31 GHz" to read "31.8 GHz" in paragraph (b) of Notes 1 and 2 for 3A001.b.1, and 3A001.b.1.a.1;

(b) Revising 3A001.b.2 (including subparagraphs) to control microwave monolithic integrated circuits with newly revised parameters;

(c) Revising Note 1 for 3A001.b.2;

(d) Adding two new notes for 3A001.b.2;

(e) Revising 3A001.b.3 to add parameters and a Note;

(f) Revising 3A001.b.4 to add parameters, a *nota bene* (N.B.), and two Notes; and

(g) Removing and reserving 3A001.b.6 "certain 'microwave assemblies' ", and reference to such commodity in the Related Controls paragraph of the List of Items Controlled section of 3A001.

• ECCN 3A002 is amended by:

(a) Revising the parameter for frequency synthesized signal generators in 3A002.d.1;

(b) Adding a new parameter in 3A002.d.2;

(c) Redesignating paragraphs 2 and 3 as paragraphs 3 and 4; and

(d) Adding a Technical Note for 3A002.d.1 regarding "pulse duration".

• ECCN 3A003 is added to control certain "spray cooling thermal management systems" and "specially designed components therefor".

• ECCN 3B001 is amended by:

(a) Removing the term "Stored program controlled" from 3B001.a, .b, .c, .d, .e, and .f.

(b) Revising the parameters in 3B001.a.1 for equipment designed for epitaxial growth;

(c) Revising the parameters in 3B001.b.4 for equipment designed for ion implantation;

(d) Revising the parameters in 3B001.d.1 for plasma enhanced CVD equipment with cassette-to-cassette operation and load-locks;

(e) Revising the parameters in 3B001.d.2 for plasma enhanced CVD equipment specially designed for automatic loading multi-chamber central wafer handling systems controlled in 3B001.e; and

(f) Adding a Note to 3B001.h for "Multi-layer masks with a phase shift layer".

• ECCN 3B002 is amended by:

(a) Revising the frequency parameter from "31 GHz" to read "31.8 GHz" in 3B002.a;

(b) Revising the parameter for test equipment for testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than "333 MHz" to read "667 MHz" in 3B002.b;

Note: For commodities no longer controlled under ECCN 3B002, there is a license requirement under ECCN 3B992 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 3D002 is amended by revising the Heading and adding paragraphs to the List of Items Controlled to remove "use" software for 3B001.g and .h (masks, reticles, and multi-layer masks) from this entry.

Note: For commodities no longer controlled under ECCN 3D002, there is a license requirement under ECCN 3D991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 3D003 is amended by revising the Heading to include the items to be controlled by this ECCN, removing the note in Related Controls, removing Note 2 in the Related Definitions paragraph, adding a new Note 2 to define "Physics-based," and deleting all paragraphs under Items paragraph of the List of Items Controlled section.

• ECCN 3D004 is added to control "software" specially designed for the "development" of the equipment controlled by the newly added ECCN 3A003 "spray cooling thermal management systems and specially designed components therefor".

• ECCN 3D991 is amended by revising the Heading to add "software" specially designed for the "use" of equipment controlled by 3B001.g and .h (masks, reticles, and multi-layer masks).

• ECCN 3E001 is amended by revising Note 1 and adding Note 2 to read "3E001 does not control 'technology' for the 'production' of equipment or components controlled by 3A003."

• ECCN 3E002 is amended by revising the Note in the List of Items Controlled to remove reference to certain microwave transistors.

• ECCN 3E003 is amended by adding a Note for 3E003.b concerning high electron mobility transistors (HEMT); and revising the frequency from "31 GHz" to "31.8 GHz" in Note 1 of the Related Controls paragraph, as well as in paragraph 3E003.g "Electronic vacuum tubes".

Category 4—Computers

• ECCN 4A002 is deleted from the CCL.

Note: For commodities no longer controlled under ECCN 4A002, there is a license requirement under ECCN 4A994 for exports and reexports to AT Column 1 countries of the Commerce Country Chart. The software and technology for the "development", "production", and "use" of this commodity will move from 4D001 to 4D994, and 4E001 to 4E992, respectively.

• ECCN 4A994 is amended by revising the Heading and adding paragraph 4A994.k to control commodities that were previously controlled by ECCN 4A002. In addition, this rule adds an explanatory note contained in the List of Items Controlled section of ECCN 4A003 to ECCN 4A994, to clarify that the control status of the listed items is determined the same way for both ECCNs.

• Composite Theoretical Performance (CTP) Calculation formula is amended to add a *nota bene* (N.B.) just below the heading to reference a new paragraph (3) to paragraph 770.2(1) Interpretation 12: "Computers", which now provides guidance as to how to calculate the Composite Theoretical Performance (CTP) for computer systems with "Non-Uniform Memory Access" (NUMA) architecture, and defines NUMA.

Category 5—Part I—Telecommunications

• ECCN 5B001 is amended by:

(a) Removing the term "stored program controlled" from 5B001.b;

(b) Removing the phrase "including 'Asynchronous Transfer Mode' ('ATM')" from 5B001.b.1;

(c) Revising the "total digital transfer rate" parameter from "1.5 Gbit/s" to "15 Gbit/s" in 5B001.b.1; and

(d) Adding a Technical Note after 5B001.b.1 to define "total digital transfer rate".

Note: For commodities no longer controlled under ECCN 5B001, there is a license requirement under ECCN 5B991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 5D001 is amended by:

(a) Removing the term "stored program controlled" from 5D001.d;

(b) Removing the phrase "including 'Asynchronous Transfer Mode' ('ATM')" from 5D001.d.1;

(c) Revising the "total digital transfer rate" parameter from "1.5 Gbit/s" to "15 Gbit/s" in 5D001.d.1; and

(d) Adding a Technical Note after 5D001.d.1 to define "total digital transfer rate".

Note: For commodities no longer controlled under ECCN 5D001, there is a license requirement under ECCN 5D991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 5E001 is amended by:

(a) Removing the term "stored program controlled" from 5E001.c;

(b) Removing the phrase "including 'Asynchronous Transfer Mode' ('ATM')" from 5E001.c.1;

(c) Revising the "total digital transfer rate" parameter from "1.5 Gbit/s" to "15 Gbit/s" in 5E001.c.1;

(d) Adding a Technical Note after 5E001.c.1 to define "total digital transfer rate"; and

(e) Revising the frequency parameter from "31 GHz" to "31.8 GHz" in 5E001.c.4.b.

Note: For commodities no longer controlled under ECCN 5E001, there is a license requirement under ECCN 5E991 for

exports and reexports to AT Column 1 countries of the Commerce Country Chart.

Category 5—Part II—Information Security

• ECCN 5A002 is amended by removing and reserving 5A002.a.7, which read "Designed or modified to provide certified or certifiable 'multilevel security' or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;"

Category 6—Sensors

• ECCN 6A001 is amended by:

(a) Revising the parameter for towed acoustic hydrophone arrays by adding the phrase " 'or able to be modified' to have hydrophone group spacing of less than 12.5 m;" to the existing parameter in 6A001.a.2.b.1; and

(b) Revising the reference in the Technical Note from "6A001.a.2.b.2" to read "6A001.a.2.b".

• ECCN 6A003 is amended by:

(a) Revising the parameter in 6A001.b.1 for video cameras incorporating solid state sensors by adding three new parameters to control these video cameras when they have optical mirrors controlled by 6A004.a, optical control equipment controlled by 6A004.d, or the capability for annotating internally generated camera tracking data; and

(b) Adding Technical Note 2 to explain camera tracking data.

• ECCN 6A005 is amended by:

(a) Repositioning the two Notes under 6A005.b.4 to under 6A005.b. Note 1 explains 6A005.b includes semiconductor "lasers" having optical output connectors (*e.g.*, fiber optic pigtails); and Note 2 explains that the control status of semiconductor "lasers" specially designed for other equipment is determined by the control status of the other equipment;

(b) Revising the wavelength ranges and CW output variations for individual multiple-transverse mode semiconductor "lasers" in 6A005.b.2 (including all subparagraphs);

(c) Revising the wavelength ranges and CW output variations for individual semiconductor "laser" arrays in 6A005.b.3 (including all subparagraphs);

(d) Adding a control paragraph 6A005.b.4 for array stacks of semiconductor "lasers" containing at least one array that is controlled under 6A005.b.3; and

(e) Adding Technical Notes 2 and 3 to 6A005.b.4 to explain "array" and "array stack".

• ECCN 6A006 is amended by adding to 6A006.a a new parameter "or triaxial fluxgate" for magnetometers.

• ECCN 6E003 is amended by adding a new parameter "non-triaxial" in 6E003.f for fluxgate magnetometers and fluxgate magnetometer systems.

Category 7—Navigation and Avionics

• Removing *nota bene* (N.B.) number 2 "For inertial navigation equipment for ships or submersibles, see Item 9.e on the Wassenaar Munitions List." from Category 7.

• ECCN 7A003 is amended by:

(a) Revising the phrase "Inertial Navigation Systems (INS)" to read "Inertial Systems" in the Heading;

(b) Revising the phrase "Inertial navigation systems" to read "Inertial Navigation Systems (INS)", and adding "vessels (surface or underwater)" to 7A003.a;

(c) Adding a new paragraph 7A003.c to control "Inertial Equipment for Azimuth, Heading, or North Pointing." Specific parameters for this equipment are also added in 7A003.c.1 and c.2; and

(d) Adding Note 3 to read, "7A003.c.1 does not control theodolite systems incorporating inertial equipment specially designed for civil surveying purposes."

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

In addition, this rule adds a paragraph (3) to paragraph 770.2(1) Interpretation 12: "Computers" to provide guidance as to how to calculate the Composite Theoretical Performance (CTP) for computer systems with "Non-Uniform Memory Access" (NUMA) architecture, and to define NUMA. In the CTP formula found in Supplement No. 1 to part 774, Category 4, there are two ways to calculate the CTP values of computers with multiple processors: the shared memory and non-shared memory methods. The use of either one of these two methods was well understood back in the early 1990's when computers were either symmetric multi-processor (SMP) systems or massively parallel systems. With the advancement of high-performance and relatively inexpensive microprocessors, NUMA has emerged as a popular computer architecture. All major manufacturers offer a product line based on NUMA. Because NUMA has established itself as a dominant technology, it became necessary to clarify how the CTP values of NUMA machines should be calculated. About two years ago, the Information Systems Technical Advisory Committee (ISTAC) examined the CTP calculation for NUMA machines. A consensus was reached in the Committee to apply the non-shared method in calculating CTP values for NUMA machines. By publishing this interpretation, we harmonize across the computer industry how the CTP values of NUMA machines should be determined.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 7, 2003, (68 FR 47833, 2003 WL 21877490), continues the Regulations in effect under the International Emergency Economic Powers Act

Saving Clause

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until June 1, 2004. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for July 28, 2004, BIS will accept license applications for items described either by the entries in effect immediately before April 29, 2004, or the entries described in this rule.

Rulemaking Requirements

1. This final 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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security,

Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final 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. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 770 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 770—[AMENDED]

■ 1. The authority citation for part 770 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, 3 CFR, 2003 Comp., p. 328.

■ 2. Section 770.2 is amended by adding paragraph (l)(3) and Note to paragraph (l)(3), to read as follows:

§ 770.2 Item interpretations.

* * * * *

(l) Interpretation 12: Computers. * * *

(3) Computer systems with "non-uniform memory access" (NUMA) architecture should use the non-shared memory method in determining the CTP value for the system. In determining the aggregate performance of Computing Elements (CEs) for NUMA systems, exporters should follow the instructions for groups of CEs not sharing memory, interconnected by one or more data channels.

Note to paragraph (l)(3): Non-Uniform Memory Access (NUMA): A multiprocessing architecture in which memory is separated into local and distant banks. NUMA is characterized by memory on the same processor board as the processor (local memory) is accessed faster than memory on other processor boards (distant memory).

PART 774—[AMENDED]

■ 3. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

Supplement No. 1 to Part 774 [Amended]

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1A005 is amended by revising the "related controls" and "items" paragraphs in the List of Items Controlled section, to read as follows:

1A005 Body armor, and specially designed components therefor, not manufactured to military standards or specifications, nor to their equivalents in performance.

* * * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Bulletproof and bullet resistant vests (body armor) NIJ levels III and IV, are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (*See* 22 CFR part 121.) (2) For "fibrous or filamentary materials" used in the manufacture of body armor, see ECCN 1C010.

Related Definitions: * * *

Items:

Note to ECCN 1A005: 1. This entry does not control body armor or protective garments when accompanying their user for the user's own personal protection.

2. This entry does not control body armor designed to provide frontal protection only from both fragment and blast from non-military explosive devices.

The list of items controlled is contained in the ECCN heading.

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B001 is amended by revising the Heading and revising the "items" paragraph in the List of Items Controlled section, to read as follows:

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or "composites", which, according to the manufacturer's technical specifications, can be equipped with electronic devices for "numerical control"; and specially designed components (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

Note 1: 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, see 2B003.

Note 2: 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;

b. Tools or cutters;

c. Extruder worms;

d. Engraved or faceted jewellery parts.

Note 3: A machine tool having at least two of the three turning, milling or grinding capabilities (*e.g.*, a turning machine with milling capability), must be evaluated against each applicable entry 2.B001.a., b. or c.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; *and*

a.2. Two or more axes which can be coordinated simultaneously for "contouring control";

Note: 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; *and*

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";

b.2. Five or more axes which can be coordinated simultaneously for "contouring control";

b.3. A positioning accuracy for jig boring machines, with "all compensations available", of less (better) than 4 µm along any linear axis; or

b.4. Fly cutting machines, having all of the following characteristics:

b.4.a. Spindle "run-out" and "camming" less (better) than 0.0004 mm TIR; *and*

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics:

c.1. Having all of the following:

c.1.a. Positioning accuracy with "all compensations available" of less (better) than 4 µm along any linear axis; *and*

c.1.b. Three or more axes which can be coordinated simultaneously for "contouring control"; *or*

c.2. Five or more axes which can be coordinated simultaneously for "contouring control";

Notes: 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; *and*

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of the following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; *or*

b. The a-axis is configured to grind barrel cams.

3. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for "contouring control";

e. Machine tools for removing metals, ceramics or "composites" having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; *or*

e.1.c. "Laser" beam; *and*

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for "contouring control"; *and*

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B002 is added after 2B001 and before 2B003, to read as follows:

2B002 Numerically controlled machine tools using a magnetorheological finishing (MRF) process

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number.

Related Controls: See also 2B001.

Related Definitions: For the purposes of 2B002, "MRF" is a material removal process using an abrasive magnetic fluid whose viscosity is controlled by a magnetic field.

Items: The list of items controlled is contained in the ECCN heading.

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B006 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

2B006 Dimensional inspection or measuring systems and equipment, as follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Computer controlled, "numerically controlled" or "stored program controlled" co-ordinate measuring machines (CMM), having a three dimensional length (volumetric) maximum permissible error of indication (MPE_E) at any point within the operating range of the machine (*i.e.*, within the length of axes) equal to or less (better) than (1.7 + L/1,000) µm (L is the measured length in mm) tested according to ISO 10360–2 (2001);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear displacement measuring instruments having any of the following:

Technical Note: For the purpose of 2B006.b.1 "linear displacement" means the change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 µm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following characteristics:

b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

b.1.c. Measuring systems having all of the following:

b.1.c.1. Containing a "laser"; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ± 1 K around a standard temperature and at a standard pressure, all of the following:

b.1.c.2.a. A "resolution" over their full scale of 0.1 µm or less (better); *and*

b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2 + L/2,000) µm (L is the measured length in mm);

Note: 2B006.b.1 does not control measuring interferometer systems, without closed or open loop feedback, containing a "laser" to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light (*e.g.*, laser light) to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B206 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

2B206 Dimensional inspection machines, instruments or systems, other than those described in 2B006, as follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

ECCN Controls: * * *

Items:

a. Computer controlled or numerically controlled dimensional inspection machines having both of the following characteristics:

a.1. Two or more axes; *and*

a.2. A one-dimensional length "measurement uncertainty" equal to or less (better) than (1.25 + L/1000) µm tested with a probe of an "accuracy" of less (better) than 0.2 µm (L is the measured length in millimeters) (Ref.: VDI/VDE 2617 Parts 1 and 2);

b. Systems for simultaneously linear-angular inspection of hemishells, having both of the following characteristics:

b.1. "Measurement uncertainty" along any linear axis equal to or less (better) than 3.5 µm per 5 mm; *and*

b.2. "Angular position deviation" equal to or less than 0.02°.

Technical Notes:

(1) The probe used in determining the measurement uncertainty of a dimensional inspection system shall be described in VDI/VDE 2617 parts 2, 3 and 4.

(2) All parameters of measurement values in this entry represent plus/minus, *i.e.*, not total band.

c. Angular displacement measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: 2B206.c does not control optical instruments, such as autocollimators, using

collimated light to detect angular displacement of a mirror.

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2D002 is amended by revising the Heading and revising the "items" paragraph in the List of Items Controlled section, to read as follows:

2D002 "Software" for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a "numerical control" unit, capable of coordinating simultaneously more than 4 axes for "contouring control".

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 2D002 does not control "software" specially designed or modified for the operation of machine tools not controlled by Category 2.

Note 2: 2D002 does not control "software" for items controlled by 2B002. See 2D001 for control of "software" for items controlled by 2B002.

The list of items controlled is contained in the ECCN heading.

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, "**Notes to Table on Deposition Techniques**" is amended by revising note 17, to read as follows:

Notes to Table on Deposition Techniques:

* * * * *

17. "Technology" specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones or medical devices or molds, for casting or molding of plastics, manufactured from alloys containing less than 5% beryllium.

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the "related controls" and "items" paragraphs in the List of Items Controlled section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: (1) All other "space qualified" and radiation hardened photovoltaic arrays defined in 3A001.e.1.c and spacecraft/satellite concentrators and batteries are under the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121). *See also* 3A101, 3A201, and 3A991.
Related Definitions: * * *
Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";
"Hybrid integrated circuits";
"Multichip integrated circuits";
"Film type integrated circuits", including silicon-on-sapphire integrated circuits;
"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; or

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials;

Note: 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125°C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55°C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55°C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [RESERVED]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 20 ns;

a.5.a.3. A resolution of more than 12 bit but equal to or less than 14 bit with a total conversion time of less than 200 ns; or

a.5.a.4. A resolution of more than 14 bit with a total conversion time of less than 1 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Note:

1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.1 ns; or

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [RESERVED]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.1 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than ($N \log_2 N$)/20,480 ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31.8 GHz; *and*

(b) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.1 does not control non-"space-qualified" tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; *and*

(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1) Exceeds 31.8 GHz but does not exceed 43.5 GHz; *and*

(2) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31.8 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a "fractional bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave monolithic integrated circuits (MMIC) power amplifiers having any of the following:

b.2.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and with an average output power greater than 4W (36 dBm) with a "fractional bandwidth" greater than 15%;

b.2.b. Rated for operation at frequencies exceeding 6 GHz up to and including 16 GHz and with an average output power greater than 1W (30 dBm) with a "fractional bandwidth" greater than 10%;

b.2.c. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and with an average output power greater than 0.8W (29 dBm) with a "fractional bandwidth" greater than 10%;

b.2.d. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz;

b.2.e. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with an average output power greater than 0.25W (24 dBm) with a "fractional bandwidth" greater than 10%; or

b.2.f. Rated for operation at frequencies exceeding 43.5 GHz.

Note 1: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

Note 2: The control status of the MMIC whose operating frequency spans more than one frequency range, as defined by 3A001.b.2., is determined by the lowest average output power control threshold.

Note 3: Notes 1 and 2 following the Category 3 heading for A. Systems, Equipment, and Components mean that 3A001.b.2. does not control MMICs if they are specially designed for other applications, *e.g.*, telecommunications, radar, automobiles.

b.3. Microwave transistors having any of the following:

b.3.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and having an average output power greater than 60W (47.8 dBm);

b.3.b. Rated for operation at frequencies exceeding 6 GHz up to and including 31.8 GHz and having an average output power greater than 20W (43 dBm);

b.3.c. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz and having an average output power greater than 0.5W (27 dBm);

b.3.d. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and having an average output power greater than 1W (30 dBm); or

b.3.e. Rated for operation at frequencies exceeding 43.5 GHz.

Note: The control status of an item whose operating frequency spans more than one frequency range, as defined by 3A001.b.3, is determined by the lowest average output power control threshold.

b.4. Microwave solid state amplifiers and microwave assemblies/modules containing microwave amplifiers having any of the following:

b.4.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and with an average output power greater than 60W (47.8 dBm) with a "fractional bandwidth" greater than 15%;

b.4.b. Rated for operation at frequencies exceeding 6 GHz up to and including 31.8 GHz and with an average output power greater than 15W (42 dBm) with a "fractional bandwidth" greater than 10%;

b.4.c. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz;

b.4.d. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with an average output power greater than 1W (30 dBm) with a "fractional bandwidth" greater than 10%;

b.4.e. Rated for operation at frequencies exceeding 43.5 GHz; *or*

b.4.f. Rated for operation at frequencies above 3 GHz and all of the following:

b.4.f.1. An average output power (in watts), P, greater than 150 divided by the maximum operating frequency (in GHz) squared [$P>150\ W*GHz^2/f_{GHz}^2$];

b.4.f.2. A fractional bandwidth of 5% or greater; *and*

b.4.f.3. Any two sides perpendicular to one another with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [$d \leq 15cm*GHz/f_{GHz}$].

N.B.: MMIC power amplifiers should be evaluated against the criteria in 3A001.b.2.

Note 1: 3A001.b.4. does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

Note 2: The control status of an item whose operating frequency spans more than one frequency range, as defined by 3A001.b.4, is determined by the lowest average output power control threshold.

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. [RESERVED]

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; or

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28°C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527°C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ± 2.5 seconds of arc.

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 μs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU , the ETSI, or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. Being "space qualified";

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: *See also* 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

a.6. Digital instrumentation data recorders, using magnetic disk storage technique, having all of the following:

a.6.a. Digitizing rate equal to or more than 100 million samples per second and a resolution of 8 bits or more; *and*

a.6.b. A continuous throughput of 1 Gbit/s or more;

b. "Frequency synthesizer", "electronic assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. Radio frequency "signal analyzers", as follows:

c.1. "Signal analyzers" capable of analyzing frequencies exceeding 31.8 GHz but less than 37.5 GHz or exceeding 43.5 GHz;

c.2. "Dynamic signal analyzers" having a "real-time bandwidth" exceeding 500 kHz;

Note: 3A002.c.2 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31.8 GHz, but not exceeding 43.5 GHz and rated to generate a pulse duration of less than 100 ns;

d.2. A maximum synthesized frequency exceeding 43.5 GHz;

d.3. A "frequency switching time" from one selected frequency to another of less than 1 ms; *or*

d.4. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Technical Note: For the purposes of 3A002.d.1., 'pulse duration' is defined as the time interval between the leading edge of the pulse achieving 90% of the peak and the trailing edge of the pulse achieving 10% of the peak.

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 43.5 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 43.5 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1×10^{-11}/month; *or*

g.2. Being "space qualified".

Note: 3A002.g.1 does not control non-"space qualified" rubidium standards.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A003 is added, to read as follows:

3A003 Spray cooling thermal management systems employing closed loop fluid handling and reconditioning equipment in a sealed enclosure where a dielectric fluid is sprayed onto electronic components using specially designed spray nozzles that are designed to maintain electronic components within their operating temperature range, and specially designed components therefor

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Number of systems, components in $
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing any of the following:

a.1.a. A silicon layer with a thickness uniform to less than ± 2.5% across a distance of 200 mm or more; or

a.1.b. A layer of any material other than silicon with a thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. Equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material "substrate";

c. Anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 0.3 µm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 µm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 0.3 µm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 µm in diameter;

d. Plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and designed according to the manufacturer's specifications or optimized for use in the production of semiconductor devices with critical dimensions of 180 nm or less;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and designed according to the manufacturer's specifications or optimized for use in the production of semiconductor devices with critical dimensions of 180 nm or less;

e. Automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. Lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.35 µm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam *or* "laser" beam, having any of the following:

f.2.a. A spot size smaller than 0.2 µm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 µm; *or*

f.2.c. An overlay accuracy of better than ± 0.20 µm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

Note: 3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3B002 "Stored program controlled" test equipment, specially designed for testing finished or unfinished semiconductor devices, as follows (*see* List of Items Controlled), and specially designed components and accessories therefor

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. For testing S-parameters of transistor devices at frequencies exceeding 31.8 GHz;
b. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 667 MHz;

Note: 3B002.b does not control test equipment specially designed for testing:
1. "Electronic assemblies" or a class of "electronic assemblies" for home or entertainment applications;
2. Uncontrolled electronic components, "electronic assemblies" or integrated circuits;
3. Memories.

Technical Note: For purposes of 3B002.b, pattern rate is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

c. For testing microwave integrated circuits controlled by 3A001.b.2.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D002 is amended by revising the Heading and the "items" paragraph in the List of Items Controlled section, to read as follows:

3D002 "Software" specially designed for the "use" of any of the following (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items: a. Equipment controlled by 3B001.a. to f.; *or*
b. Equipment controlled by 3B002.

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D003 is amended by revising the Heading and the "related controls", "related definitions", and "items" paragraphs in the List of Items Controlled section, to read as follows:

3D003 Physics-based simulation "software" specially designed for the "development" of lithographic, etching or deposition processes for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor materials

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: N/A
Related Definitions: (1) Libraries, design attributes or associated data for the design of semiconductor devices or integrated circuits are considered as "technology". (2) 'Physics-based' in 3D003 means using computations to determine a sequence of physical cause and effect events based on physical properties (*e.g.*, temperature, pressure, diffusion constants and semiconductor mate ˙als properties).
Items: The list of items controlled is contained in the ECCN heading.

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D004 is added, to read as follows:

3D004 "Software" specially designed for the "development" of the equipment controlled by 3A003

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A
TSR: Yes

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D991 is amended by revising the Heading, to read as follows:

3D991 "Software" specially designed for the "development", "production", or "use" of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992; or "software" specially designed for the "use" of equipment controlled by 3B001.g and .h

* * * * *

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E001 is amended revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 or 3B992) or 3C

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definition: * * *
Items: The list of items controlled is contained in the ECCN heading.

Note 1: 3E001 does not control "technology" for the "development" or "production" of integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:
(a) Using "technology" of 0.5 µm or more; *and*
(b) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

Note 2: 3E001 does not control "technology" for the "production" of equipment or components controlled by 3A003.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3E002 "Technology" according to the General Technology Note other than that controlled in 3E001 for the "development" or "production" of "microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items: The list of items controlled is contained in the ECCN heading.

Note: 3E002 does not control "technology" for the "development" or "production" of integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:
(a) Using "technology" of 0.5 µm or more; *and*

(b) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E003 is amended by revising the "related controls" and "items" paragraphs in the List of Items Controlled section, to read as follows:

3E003 Other "technology" for the "development" or "production" of items described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Technology for the "development" or "production" of "space qualified" electronic vacuum tubes operating at frequencies of 31.8 GHz or higher, described in 3E003.g, is under the export license authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121); (2) See 3E001 for silicon-on-insulation (SOI) technology for the "development" or "production" related to radiation hardening of integrated circuits.

Related Definitions: * * *

Items: a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

Note: 3E003.b does not control technology for high electron mobility transistors (HEMT) operating at frequencies lower than 31.8 GHz and hetero-junction bipolar transistors (HBT) operating at frequencies lower than 31.8 GHz.

c. "Superconductive" electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components;

g. Electronic vacuum tubes operating at frequencies of 31.8 GHz or higher.

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A002 is removed.

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A994 is amended by revising the Heading and the "items" paragraph in the List of Items Controlled section, to read as follows:

4A994 Computers, "electronic assemblies", and related equipment not controlled by 4A001, or 4A003, and specially designed components therefor

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

Note 1: The control status of the "digital computers" and related equipment described in 4A994 is determined by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, *see* Category 5, Part 1 (Telecommunications).

c. The "technology" for the "digital computers" and related equipment is determined by 4E.

a. Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70 °C);

b. "Digital computers" having a "composite theoretical performance" ("CTP") equal to or greater than 6 million theoretical operations per second (MTOPS);

c. "Electronic assemblies" that are specially designed or modified to enhance performance by aggregation of "computing elements" ("CEs"), as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements" ("CEs"); *or*

c.2. Having a sum of maximum data rates on all channels available for connection to associated processors exceeding 40 million Byte/s;

Note 1: 4A994.c applies only to "electronic assemblies" and programmable interconnections with a "CTP" not exceeding the limits in 4A994.b, when shipped as unintegrated "electronic assemblies". It does not apply to "electronic assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A994.

Note 2: 4A994.c does not control any "electronic assembly" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A994.b.

d. Disk drives and solid state storage equipment:

d.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" exceeding 25 million bit/s;

d.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with a "maximum bit transfer rate" exceeding 36 million bit/s;

e. Input/output control units designed for use with equipment controlled by 4A994.d;

f. Equipment for "signal processing" or "image enhancement" having a "composite theoretical performance" ("CTP") exceeding 8.5 million theoretical operations per second (MTOPS);

g. Graphics accelerators or graphics coprocessors that exceed a "three dimensional vector rate" of 400,000 or, if supported by 2–D vectors only, a "two dimensional vector rate" of 600,000;

Note: The provisions of 4A994.g do not apply to work stations designed for and limited to:

a. Graphic arts (*e.g.*, printing, publishing); and

b. The display of two-dimensional vectors.

h. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

Note 1: 4A994.h does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

i. Equipment containing "terminal interface equipment" exceeding the limits in 5A991.

Note: For the purposes of 4A994.i, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

j. Equipment specially designed to provide external interconnection of "digital computers" or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: 4A994.j does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, "network access controllers" or "communication channel controllers".

k. "Hybrid computers" and "electronic assemblies" and specially designed components therefor, as follows:

k.1. Containing "digital computers" controlled by 4A003;

k.2. Containing analog-to-digital converters having all of the following characteristics:

k.2.a. 32 channels or more; *and*

k.2.b. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by adding a *nota bene* (N.B.) after the title "Information on How to Calculate "composite Theoretical Performance ("CTP") and before the Technical Note that appears at the end of Category 4, to read as follows:

* * * * *

N.B. *See* Interpretation 12: "Computers", § 770.2(1)(3), to find guidance as to how to calculate the Composite Theoretical Performance (CTP) for computer systems

with 'Non-Uniform Memory Access' (NUMA) architecture, and obtain a definition for NUMA.

* * * * *

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5B001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5B001 Telecommunication test, inspection and production equipment, as follows (*See* List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definition: * * *

Items: a. Equipment and specially designed components or accessories therefor, specially designed for the "development", "production" or "use" of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment.

b. Equipment and specially designed components or accessories therefor, specially designed for the "development" of any of the following telecommunication transmission or switching equipment:

b.1. Equipment employing digital techniques designed to operate at a "total digital transfer rate" exceeding 15 Gbit/s;

Technical Note: For switching equipment the "total digital transfer rate" is measured at the highest speed port or line.

b.2. Equipment employing a "laser" and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing "optical amplification";

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the "development" of commercial TV systems.

b.3. Equipment employing "optical switching";

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

b.5. Equipment employing "common channel signaling" operating in non-associated mode of operation.

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5D001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5D001 "Software", as described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" as follows:

c.1. "Software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [RESERVED];

c.3. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or switching equipment:

d.1. Equipment employing digital techniques, including designed to operate at a "total digital transfer rate" exceeding 15 Gbit/s;

Technical Note: For switching equipment the "total digital transfer rate" is measured at the highest speed port or line.

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5E001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5E001 "Technology", (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001 or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. "Technology" for the "development" of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in "software";

b.4. "Technology" for the "development" of "spread spectrum" techniques, including "frequency hopping" techniques.

c. "Technology" according the General Technology Note for the "development" or "production" of any of the following telecommunication transmission or switching equipment, functions or features:

c.1. Equipment employing digital techniques designed to operate at a "total digital transfer rate" exceeding 15 Gbit/s;

Technical Note: For switching equipment the "total digital transfer rate" is measured at the highest speed port or line.

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control "technology" for the "development" or "production" of commercial TV systems.

c.3. Equipment employing "optical switching"; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

c.4.b. Operating at input or output frequencies exceeding 31.8 GHz; *or*

Note: 5E001.c.4.b. does not control "technology" for the "development" or "production" of equipment designed or modified for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c.5. Equipment employing "common channel signaling" operating in non-associated mode of operation.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category

5—Telecommunications and "Information Security", Part II—"Information Security", Export Control Classification Number (ECCN) 5A002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows (*see* List of Items Controlled), and other specially designed components therefor

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note: 5A002 does not control the following. However, these items are instead controlled under 5A992:

(a) "Personalized smart cards":

(1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this Note; *or*

(2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within.

N.B.: If a "personalized smart card" has multiple functions, the control status of each function is assessed individually.

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers.

(c) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected "software";

(2) Access to any of the following:

(a) Copy-protected contents stored on read-only media; or

(b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or*

(3) Copying control of copyright protected audio/video data.

(d) Cryptographic equipment specially designed and limited for banking use or money transactions;

(e) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption.

N.B.: The term "money transactions" includes the collection and settlement of fares or credit functions.

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows, and other specially designed components therefor:

N.B.: For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) *see* 7A005.

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes:

1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use "cryptography" employing analog principles when implemented with digital techniques.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; *or*

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [RESERVED]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, including the hopping code for "frequency hopping" systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for "time-modulated ultra-wideband" systems;

a.7. [RESERVED]

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A001 Acoustics

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items: a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ±20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; *and*

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9°; *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.*, air gun or vapor-shock gun) or chemical (*e.g.*, explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 Mw/mm²/Hz for devices operating at frequencies below 10 kHz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: 6A001.a.1.d includes:

a. Equipment using coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers; or

a.2.a.2.b. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than -180dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of −160 dB (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m or 'able to be modified' to have hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or 'able to be modified' to operate at depths exceeding 35 m;

Technical Note: "Able to be modified" in 6A001.a.2.b means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5° *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A003 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A003 Cameras

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. Instrumentation cameras and specially designed components therefor, as follows:

Note: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having a peak response in the wavelength range exceeding 10nm, but not exceeding 30,000 nm and having all of the following:

b.1.a. Having any of the following:

b.1.a.1. More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.a.2. More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.a.3. More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array; *and*

b.1.b. Having any of the following:

b.1.b.1. Optical mirrors controlled by 6A004.a.;

b.1.b.2. Optical control equipment controlled by 6A004.d.; *or*

b.1.b.3. The capability for annotating internally generated camera tracking data.

Technical Notes:

1. For the purposes of this entry, digital video cameras should be evaluated by the maximum number of "active pixels" used for capturing moving images.

2. For the purpose of this entry, camera tracking data is the information necessary to define camera line of sight orientation with respect to the earth. This includes: (1) the horizontal angle the camera line of sight makes with respect to the earth's magnetic field direction and; (2) the vertical angle between the camera line of sight and the earth's horizon.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. A peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm;

b.2.b. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.c. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating "focal plane arrays" having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A005 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A005 "Lasers" (other than those described in 0B001.g.5 or .h.6), components and optical equipment, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. Gas "lasers", as follows:

a.1. Excimer "lasers", having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; *or*

a.1.c.2. An average output power exceeding 500 W; *or*

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.d.2. An average output power exceeding 30 W;

N.B.: For excimer "lasers" specially designed for lithography equipment, *see* 3B001.

a.2. Metal vapor "lasers", as follows:

a.2.a. Copper (Cu) "lasers" having an average output power exceeding 20 W;

a.2.b. Gold (Au) "lasers" having an average output power exceeding 5 W;

a.2.c. Sodium (Na) "lasers" having an output power exceeding 5 W;

a.2.d. Barium (Ba) "lasers" having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) "lasers" having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 5 kW; *or*

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide (CO_2) "lasers" having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a "pulse duration" exceeding 10 µs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; *or*

a.4.b.2. A pulsed "peak power" exceeding 100 kW; *or*

a.4.c. A pulsed output having a "pulse duration" equal to or less than 10 µs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; *or*

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. "Chemical lasers", as follows:

a.5.a. Hydrogen Fluoride (HF) "lasers";

a.5.b. Deuterium Fluoride (DF) "lasers";

a.5.c. "Transfer lasers", as follows:

a.5.c.1. Oxygen Iodine (O_2-I) "lasers";

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-CO_2) "lasers";

a.6. Krypton ion or argon ion "lasers" having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 50 W; or

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas "lasers", having any of the following:

Note: 6A005.a.7 does not control nitrogen "lasers".

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed "peak power" exceeding 10 W; or

a.7.c.2. An average or CW output power exceeding 10 W; *or*

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor "lasers", as follows:

Note 1: 6A005.b. includes semiconductor "lasers" having optical output connectors (*e.g.*, fiber optic pigtails).

Note 2: The control status of semiconductor "lasers" specially designed for other equipment is determined by the control status of the other equipment.

b.1. Individual single-transverse mode semiconductor "lasers" having any of the following:

b.1.a. A wavelength equal to or less than 1510 nm, and having an average or CW output power exceeding 1.5 W; or

b.1.b. A wavelength greater than 1510 nm, and having an average or CW output power exceeding 500 mW;

b.2. Individual, multiple-transverse mode semiconductor "lasers" , having any of the following:

b.2.a. A wavelength of less than 1400 nm, and having an average or CW output power exceeding 10W;

b.2.b. A wavelength equal to or greater than 1400 nm and less than 1900 nm, and having an average or CW output power exceeding 2.5 W; *or*

b.2.c. A wavelength equal to or greater than 1900 nm and having an average or CW output power exceeding 1 W.

b.3. Individual semiconductor "laser" arrays, having any of the following:

b.3.a. A wavelength of less than 1400 nm and having an average or CW output power exceeding 80 W; *or*

b.3.b. A wavelength equal to or greater than 1400 nm and less than 1900 nm, and having an average or CW output power exceeding 25 W; *or*

b.3.c. A wavelength equal to or greater than 1900 nm, and having an average or CW output power exceeding 10 W.

b.4. Array stacks of semiconductor "lasers" containing at least one array that is controlled under 6A005.b.3.

Technical Notes:

1. Semiconductor "lasers" are commonly called "laser" diodes.

2. An "array" consists of multiple semiconductor "laser" emitters fabricated as a single chip so that the centers of the emitted light beams are on parallel paths.

3. An "array stack" is fabricated by stacking, or otherwise assembling, "arrays" so that the centers of the emitted light beams are on parallel paths.

c. Solid state "lasers", as follows:

c.1. "Tunable" "lasers" having any of the following:

Note: 6A005.c.1 includes titanium-sapphire (Ti: Al_2O_3), thulium-YAG (Tm: YAG), thulium-YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center "lasers".

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed "peak power" exceeding 20 W; *or*

c.1.b.2. An average or CW output power exceeding 20 W; *or*

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-"tunable" "lasers", as follows:

Note: 6A005.c.2 includes atomic transition solid state "lasers".

c.2.a. Neodymium glass "lasers", as follows:

c.2.a.1. "Q-switched lasers" having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; *or*

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-"Q-switched lasers" having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; *or*

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) "lasers", having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

N.B.: For neodymium-doped (other than glass) "lasers" having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, *see* 6A005.c.2.c.

c.2.b.1. Pulse-excited, mode-locked, "Q-switched lasers" having a "pulse duration" of less than 1 ns and having any of the following:

c.2.b.1.a. A "peak power" exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; *or*

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, "Q-switched lasers" having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A "peak power" exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; *or*

c.2.b.2.a.3. A pulsed energy exceeding 2 J; *or*

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A "peak power" exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; *or*

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-"Q-switched lasers", having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A "peak power" exceeding 500 kW; *or*

c.2.b.3.a.2. An average output power exceeding 150 W; *or*

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A "peak power" exceeding 1 MW; *or*

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited "lasers" having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A "peak power" exceeding 500 kW; *or*

c.2.b.4.a.2. An average or CW output power exceeding 150 W; *or*

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A "peak power" exceeding 1 MW; *or*

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-"tunable" "lasers", having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. "Q-switched lasers" having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode "lasers";

c.2.c.3.a.2.b. 30 W for multimode "lasers";

c.2.c.3.b. Non-"Q-switched lasers" having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

c.2.c.3.b.2. An average or CW output power exceeding 50 W; *or*

c.2.c.4. A wavelength exceeding 1,400 nm and having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid "lasers", having any of the following:

d.1. A wavelength less than 150 nm and;

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; *or*

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the "pulse duration" is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 10 W; *or*

d.3.b. An average or CW output power exceeding 10 W; *or*

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

Technical Note: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled "lasers";

f. Optical equipment, as follows:

N.B.: For shared aperture optical elements, capable of operating in "Super-High Power Laser" ("SHPL") applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any of the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. "Laser" diagnostic equipment capable of measuring "SHPL" system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array "SHPL" system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with "SHPL" systems.

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A006 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A006 "Magnetometers", "magnetic gradiometers", "intrinsic magnetic gradiometers" and compensation systems, and specially designed components therefor, as follows (*see* List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. "Magnetometers" using "superconductive", optically pumped, nuclear precession (proton/Overhauser) or triaxial fluxgate "technology" having a "noise level" (sensitivity) lower (better) than 0.05 nT rms per square root Hz;

b. Induction coil "magnetometers" having a "noise level" (sensitivity) lower (better) than any of the following:

b.1. 0.05 nT rms/square root Hz at frequencies of less than 1 Hz;

b.2. 1×10^{-3}nT rms/square root Hz at frequencies of 1 Hz or more but not exceeding 10 Hz; *or*

b.3. 1×10^{-4}nT rms/square root Hz at frequencies exceeding 10 Hz;

c. Fiber optic "magnetometers" having a "noise level" (sensitivity) lower (better) than 1 nT rms per square root Hz;

d. "Magnetic gradiometers" using multiple "magnetometers" controlled by 6A006.a, 6A006.b or 6A006.c;

e. Fiber optic "intrinsic magnetic gradiometers" having a magnetic gradient field "noise level" (sensitivity) lower (better) than 0.3 nT/m rms per square root Hz;

f. "Intrinsic magnetic gradiometers", using "technology" other than fiber-optic "technology", having a magnetic gradient field "noise level" (sensitivity) lower (better) than 0.015 nT/m rms per square root Hz;

g. Magnetic compensation systems for magnetic sensors designed for operation on mobile platforms;

h. "Superconductive" electromagnetic sensors, components manufactured from "superconductive" materials:

h.1. Designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents (including Josephson effect devices or "superconductive" quantum interference devices (SQUIDS));

h.2. Designed for sensing electromagnetic field variations at frequencies of 1 KHz or less; *and*

h.3. Having any of the following characteristics:

h.3.a. Incorporating thin-film SQUIDS with a minimum feature size of less than 2 μm and with associated input and output coupling circuits;

h.3.b. Designed to operate with a magnetic field slew rate exceeding 1×10^{-6} magnetic flux quanta per second;

h.3.c. Designed to function without magnetic shielding in the earth's ambient magnetic field; or

h.3.d. Having a temperature coefficient less (smaller) than 0.1 magnetic flux quantum/K.

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6E003 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6E003 Other "technology", as follows (*see* List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. Acoustics. None.

b. Optical sensors. None.

c. Cameras. None.

d. Optics, "technology", as follows:

d.1. Optical surface coating and treatment "technology" "required" to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};

N.B.: *See also* 2E003.f.

d.2. Optical fabrication "technology" using single point diamond turning techniques to produce surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m^2;

e. Lasers. "Technology" "required" for the "development", "production" or "use" of specially designed diagnostic instruments or targets in test facilities for "SHPL" testing or testing or evaluation of materials irradiated by "SHPL" beams;

f. Magnetometers. "Technology" "required" for the "development" or "production" of non-triaxial fluxgate "magnetometers" or non-triaxial fluxgate "magnetometer" systems, having any of the following:

f.1. A "noise level" of less than 0.05 nT rms per square root Hz at frequencies of less than 1 Hz; *or*

f.2. A "noise level" of less than 1×10^{-3} nT rms per square root Hz at frequencies of 1 Hz or more.

■ 35. Category 7 "Navigation and Avionics" is amended by removing the second *Nota bene* (N.B.2.) in the beginning of section A "Systems, Equipment and Components".

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A003 is amended by revising the Heading and the "items" paragraph in the List of Items Controlled section, to read as follows:

7A003 Inertial Systems and specially designed components therefor

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. Inertial Navigation Systems (INS) (gimballed or strapdown) and inertial equipment designed for "aircraft", land vehicles, vessels (surface or underwater) or "spacecraft" for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor:

a.1. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (nm/hr) Circular Error Probable (CEP) or less (better); *or*

a.2. Specified to function at linear acceleration levels exceeding 10 g.

b. Hybrid Inertial Navigation Systems embedded with Global Navigation Satellite System(s) (GNSS) or with "Data-Based Referenced Navigation" ("DBRN") System(s) for attitude, guidance or control, subsequent to normal alignment, having an INS navigation position accuracy, after loss of GNSS or "DBRN" for a period of up to 4 minutes, of less (better) than 10 meters Circular Error Probable (CEP).

c. Inertial Equipment for Azimuth, Heading, or North Pointing having any of the following characteristics, and specially designed components therefor:

c.1. Designed to have an Azimuth, Heading, or North Pointing accuracy equal to, or less (better) than 6 arc minutes RMS at 45 degrees latitude; *or*

c.2. Designed to have a non-operating shock level of 900 g or greater at a duration of 1-msec, or greater.

Note 1: The parameters of 7A003.a and 7A003.b are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; *and*

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz;

2. A roll and yaw rate of equal to or more than +2.62 rad/s (150 deg/s); *or*

3. According to national standards equivalent to 1. or 2. of this note.

Note 2: 7A003 does not control inertial navigation systems that are certified for use on "civil aircraft" by civil authorities of a country in Country Group A:1.

Note 3: 7A003.c.1 does not control theodolite systems incorporating inertial equipment specially designed for civil surveying purposes.

Technical Notes:

1. 7A003.b refers to systems in which an INS and other independent navigation aids are built into a single unit (embedded) in order to achieve improved performance.

2. "Circular Error Probable" ("CEP")—In a circular normal distribution, the radius of the circle containing 50 percent of the individual measurements being made, or the radius of the circle within which there is a 50 percent probability of being located.

Dated: April 21, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–9540 Filed 4–28–04; 8:45 am]

BILLING CODE 3510–33–P

Federal Register

Thursday,
April 29, 2004

Part IV

Department of Transportation

Federal Highway Administration

Tier 2 Environmental Impact Statements: Daviess, Gibson, Greene, Marion, Johnson, Monroe, Morgan, Pike, Vanderburgh and Warrick Counties; Notices

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 2 Environmental Impact Statement: Vanderburgh, Warrick, and Gibson Counties, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 environmental impact statement (EIS) will be prepared for the proposed Section 1, located in Vanderburgh, Warrick, and Gibson Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway.

FOR FURTHER INFORMATION CONTACT: Anthony M. DeSimone, Environmental Engineer, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–5307 or Lyle Sadler, Project Manager, Indiana Department of Transportation, Room N855, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 233–6972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare a Tier 2 EIS on a proposal to build Section 1 of the Evansville-to-Indianapolis I–69 highway. Section 1 is located in Vanderburgh, Warrick and Gibson Counties, Indiana. The proposed action would involve the construction of an interstate highway from the interchange of Interstate 64 (I–64) and Interstate 164 (I–164) near Evansville and proceeding north approximately 12.9 miles to State Road (SR) 64 near Oakland City.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU #3.

The FHWA approved the Record of Decision (ROD) on the Tier 1 Final EIS for the I–69 SIU #3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) Whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis.

FHWA and INDOT have consulted extensively with environmental resource agencies about the level of detail needed in the Tier 1 process in order to provide a basis for informed decision-making at this stage. The consultation began in early 1999, before a decision had been made to proceed with a tiered study and continued throughout the entire Tier 1 process.

Extensive public involvement was included in the development of the Tier 1 EIS at many stages including Purpose and Need, alternatives development and screening and final selection. Twelve build alternatives and the No Build Alternative were considered under detailed analysis. Of these, Alternative 3C was selected as the single Preferred Alternative in the Tier 1 Final EIS.

The Tier 1 ROD for the I–69 SIU #3 included the selection of a variable width corridor, generally 2000 feet wide, in which to build an Interstate highway that connects the following points in Indiana: Evansville, Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, Martinsville and Indianapolis. The approved corridor is approximately 142 miles long. The Tier 1 ROD approved termini for six Tier 2 Sections within the approved corridor, and stated that a separate EIS would be prepared for each Tier 2 section. Each Tier 2 EIS will be used to select the specific alignment of the proposed action and to determine mitigation measures within that section.

The overall purpose of I–69 SIU #3, as defined in the Tier 1 EIS, is to: Strengthen the transportation network in Southwest Indiana; Support Economic Development in Southwest Indiana; and Complete the portion of the National I–69 project between Evansville and Indianapolis. Each Tier 2 section will contribute to achieving the overall goals of I–69 SIU #3, and also will serve localized objectives, which were discussed in the Tier 1 Final EIS and will be further defined in each Tier 2 EIS.

The range of alternatives appropriate for each Tier 2 EIS will be determined for that section in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations. Alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, pursuant to the Tier 1 ROD, alternatives outside the selected corridor may be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Interchange location and design, access to abutting properties, and location of grade separations with intersecting roads will be determined in the Tier 2 EISs.

Scoping will be initiated individually for each Tier 2 section but will be coordinated to address similar issues simultaneously when possible. The appropriate federal and state resource agencies will be included in this ongoing process. The public will also have opportunities to comment during the scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address all six Tier 2 sections will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 22, 2004.

Anthony M. DeSimone,

Environmental Engineer, Federal Highway Administration, Indianapolis, Indiana.

[FR Doc. 04–9766 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 2 Environmental Impact Statement: Gibson, Pike, and Daviess Counties, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 environmental impact statement (EIS) will be prepared for the proposed Section 2, located in Gibson, Pike and Daviess Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway.

FOR FURTHER INFORMATION CONTACT: Anthony M. DeSimone, Environmental Engineer, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–5307 or Lyle Sadler, Project

Manager, Indiana Department of Transportation, Room N855, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 233–6972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare a Tier 2 EIS on a proposal to build Section 2 of the Evansville-to-Indianapolis I–69 highway. Section 2 is located in Gibson, Pike and Daviess Counties, Indiana. The proposed action would involve the construction of an interstate highway from State Road 64 near Oakland City and proceeding northeast for approximately 28.6 miles to U.S. Route 50 east of Washington.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU #3.

The FHWA approved the Record of Decision (ROD) on the Tier 1 Final EIS for the I–69 SIU #3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis.

FHWA and INDOT have consulted extensively with environmental resource agencies about the level of detail needed in the Tier 1 process in order to provide a basis for informed decision-making at this stage. The consultation began in early 1999, before a decision had been made to proceed with a tiered study and continued throughout the entire Tier 1 process.

Extensive public involvement was included in the development of the Tier 1 EIS at many stages including Purpose and Need, alternatives development and screening and final selection. Twelve build alternatives and the No Build Alternative were considered under detailed analysis. Of these, Alternative 3C was selected as the single Preferred Alternative in the Tier 1 Final EIS.

The Tier 1 ROD for the I–69 SIU #3 included the selection of a variable width corridor, generally 2000 feet wide, in which to build an Interstate highway that connects the following points in Indiana: Evansville, Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, Martinsville and Indianapolis. The approved corridor is approximately 142 miles long. The Tier 1 ROD approved termini for six Tier 2 sections within the approved corridor, and stated that a separate EIS would be prepared for each Tier 2 section. Each Tier 2 EIS will be used to select the specific alignment of the proposed action and to determine mitigation measures within that section.

The overall purpose of I–69 SIU #3, as defined in the Tier 1 EIS, is to: Strengthen the transportation network in Southwest Indiana; Support Economic Development in Southwest Indiana; and Complete the portion of the National I–69 project between Evansville and Indianapolis. Each Tier 2 section will contribute to achieving the overall goals of I–69 SIU #3, and also will serve localized objectives, which were discussed in the Tier 1 Final EIS and will be further defined in each Tier 2 EIS.

The range of alternatives appropriate for each Tier 2 EIS will be determined for that section in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations. Alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, pursuant to the Tier 1 ROD, alternatives outside the selected corridor may be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Interchange location and design, access to abutting properties, and location of grade separations with intersecting roads will be determined in the Tier 2 EISs.

Scoping will be initiated individually for each Tier 2 section but will be coordinated to address similar issues simultaneously when possible. The appropriate federal and state resource agencies will be included in this ongoing process. The public will also have opportunities to comment during the scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address all six Tier 2 sections will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 22, 2004.

Anthony M. DeSimone,

Environmental Engineer, Federal Highway Administration, Indianapolis, Indiana.

[FR Doc. 04–9767 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 2 Environmental Impact Statement: Daviess and Greene Counties, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 environmental impact statement (EIS) will be prepared for the proposed Section 3, located in Daviess and Greene Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway.

FOR FURTHER INFORMATION CONTACT: Anthony M. DeSimone, Environmental Engineer, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–5307 or Lyle Sadler, Project Manager, Indiana Department of Transportation, Room N855, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 233–6972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare a Tier 2 EIS on a proposal to build Section 3 of the Evansville-to-Indianapolis I–69 highway. Section 3 is located in Daviess and Greene Counties, Indiana. The proposed action would involve the construction of an interstate highway from U.S. Route 50 east of Washington and proceeding northerly towards Newberry and then turns easterly to U.S. Route 231 near the unincorporated community of Scotland and the Crane Naval Weapons Support Center for a length of approximately 25.3 miles.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of

independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU #3.

The FHWA approved the Record of Decision (ROD) on the Tier 1 Final EIS for the I–69 SIU #3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) Whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis.

FHWA and INDOT have consulted extensively with environmental resource agencies about the level of detail needed in the Tier 1 process in order to provide a basis for informed decision-making at this stage. The consultation began in early 1999, before a decision had been made to proceed with a tiered study and continued throughout the entire Tier 1 process.

Extensive public involvement was included in the development of the Tier 1 EIS at many stages including Purpose and Need, alternatives development and screening and final selection. Twelve build alternatives and the No Build Alternative were considered under detailed analysis. Of these, Alternative 3C was selected as the single Preferred Alternative in the Tier 1 Final EIS.

The Tier 1 ROD for the I–69 SIU #3 included the selection of a variable width corridor, generally 2000 feet wide, in which to build an Interstate highway that connects the following points in Indiana: Evansville, Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, Martinsville and Indianapolis. The approved corridor is approximately 142 miles long. The Tier 1 ROD approved termini for six Tier 2 Sections within the approved corridor, and stated that a separate EIS would be prepared for each Tier 2 section. Each Tier 2 EIS will be used to select the specific alignment of the proposed action and to determine mitigation measures within that section.

The overall purpose of I–69 SIU #3, as defined in the Tier 1 EIS, is to: Strengthen the transportation network in Southwest Indiana; Support Economic Development in Southwest Indiana; and Complete the portion of the National I–69 project between Evansville and Indianapolis. Each Tier 2 section will contribute to achieving the overall goals of I–69 SIU #3, and also will serve localized objectives, which were discussed in the Tier 1 Final EIS and will be further defined in each Tier 2 EIS.

The range of alternatives appropriate for each Tier 2 EIS will be determined for that section in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations. Alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, pursuant to the Tier 1 ROD, alternatives outside the selected corridor may be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Interchange location and design, access to abutting properties, and location of grade separations with intersecting roads will be determined in the Tier 2 EISs.

Scoping will be initiated individually for each Tier 2 section but will be coordinated to address similar issues simultaneously when possible. The appropriate federal and state resource agencies will be included in this ongoing process. The public will also have opportunities to comment during the scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address all six Tier 2 sections will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 22, 2004.

Anthony M. DeSimone,

Environmental Engineer, Federal Highway Administration, Indianapolis, Indiana.

[FR Doc. 04–9768 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 2 Environmental Impact Statement: Greene and Monroe Counties, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 environmental impact statement (EIS) will be prepared for the proposed Section 4, located in Greene and Monroe Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway.

FOR FURTHER INFORMATION CONTACT: Anthony M. DeSimone, Environmental Engineer, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–5307 or Lyle Sadler, Project Manager, Indiana Department of Transportation, Room N855, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 233–6972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare a Tier 2 EIS on a proposal to build Section 4 of the Evansville-to-Indianapolis I–69 highway. Section 4 is located in Greene and Monroe Counties, Indiana. The proposed action would involve the construction of an interstate highway from U.S. Route 231 near the unincorporated community of Scotland and the Crane Naval Weapons Support Center and proceeding east/northeast approximately 26.6 miles to State Route 37 southwest of Bloomington.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU #3.

The FHWA approved the Record of Decision (ROD) on the Tier 1 Final EIS for the I–69 SIU #3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis.

FHWA and INDOT have consulted extensively with environmental resource agencies about the level of detail needed in the Tier 1 process in order to provide a basis for informed decision-making at this stage. The consultation began in early 1999, before a decision had been made to proceed with a tiered study and continued throughout the entire Tier 1 process.

Extensive public involvement was included in the development of the Tier 1 EIS at many stages including Purpose and Need, alternatives development and screening and final selection. Twelve

build alternatives and the No Build Alternative were considered under detailed analysis. Of these, Alternative 3C was selected as the single Preferred Alternative in the Tier 1 Final EIS.

The Tier 1 ROD for the I–69 SIU #3 included the selection of a variable width corridor, generally 2000 feet wide, in which to build an Interstate highway that connects the following points in Indiana: Evansville, Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, Martinsville and Indianapolis. The approved corridor is approximately 142 miles long. The Tier 1 ROD approved termini for six Tier 2 Sections within the approved corridor, and stated that a separate EIS would be prepared for each Tier 2 section. Each Tier 2 EIS will be used to select the specific alignment of the proposed action and to determine mitigation measures within that section.

The overall purpose of I–69 SIU #3, as defined in the Tier 1 EIS, is to: Strengthen the transportation network in Southwest Indiana; Support Economic Development in Southwest Indiana; and Complete the portion of the National I–69 project between Evansville and Indianapolis. Each Tier 2 section will contribute to achieving the overall goals of I–69 SIU #3, and also will serve localized objectives, which were discussed in the Tier 1 Final EIS and will be further defined in each Tier 2 EIS.

The range of alternatives appropriate for each Tier 2 EIS will be determined for that section in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations. Alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, pursuant to the Tier 1 ROD, alternatives outside the selected corridor may be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Interchange location and design, access to abutting properties, and location of grade separations with intersecting roads will be determined in the Tier 2 EISs.

Scoping will be initiated individually for each Tier 2 section but will be coordinated to address similar issues simultaneously when possible. The appropriate Federal and State resource agencies will be included in this ongoing process. The public will also have opportunities to comment during the scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address all six Tier 2 sections will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S. 315; 49 CFR 1.48.

Issued on: April 22, 2004.

Anthony M. DeSimone,

Environmental Engineer, Federal Highway Administration, Indianapolis, Indiana.

[FR Doc. 04–9769 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION
Federal Highway Administration

Tier 2 Environmental Impact Statement: Monroe and Morgan Counties, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 environmental impact statement (EIS) will be prepared for the proposed Section 5, located in Monroe and Morgan Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway.

FOR FURTHER INFORMATION CONTACT: Anthony M. DeSimone, Environmental Engineer, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–5307 or Lyle Sadler, Project Manager, Indiana Department of Transportation, Room N855, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 233–6972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare a Tier 2 EIS on a proposal to build Section 5 of the Evansville-to-Indianapolis I–69 highway. Section 5 is located in Monroe and Morgan Counties, Indiana. The proposed action would involve the construction of an interstate highway following State Route (SR) 37 from just south of Bloomington and proceeding north for approximately 22.3 miles to SR 39 near Martinsville.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU #3.

The FHWA approved the Record of Decision (ROD) on the Tier 1 Final EIS for the I–69 SIU #3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) Whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis.

FHWA and INDOT have consulted extensively with environmental resource agencies about the level of detail needed in the Tier 1 process in order to provide a basis for informed decision-making at this stage. The consultation began in early 1999, before a decision had been made to proceed with a tiered study and continued throughout the entire Tier 1 process.

Extensive public involvement was included in the development of the Tier 1 EIS at many stages including Purpose and Need, alternatives development and screening and final selection. Twelve build alternatives and the No Build Alternative were considered under detailed analysis. Of these, Alternative 3C was selected as the single Preferred Alternative in the Tier 1 Final EIS.

The Tier 1 ROD for the I–69 SIU #3 included the selection of a variable width corridor, generally 2000 feet wide, in which to build an Interstate highway that connects the following points in Indiana: Evansville, Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, Martinsville and Indianapolis. The approved corridor is approximately 142 miles long. The Tier 1 ROD approved termini for six Tier 2 Sections within the approved corridor, and stated that a separate EIS would be prepared for each Tier 2 section. Each Tier 2 EIS will be used to select the specific alignment of the proposed action and to determine mitigation measures within that section.

The overall purpose of I–69 SIU #3, as defined in the Tier 1 EIS, is to: Strengthen the transportation network in Southwest Indiana; Support Economic Development in Southwest Indiana; and Complete the portion of the National I–69 project between Evansville and Indianapolis. Each Tier 2

section will contribute to achieving the overall goals of I–69 SIU #3, and also will serve localized objectives, which were discussed in the Tier 1 Final EIS and will be further defined in each Tier 2 EIS.

The range of alternatives appropriate for each Tier 2 EIS will be determined for that section in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations. Alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, pursuant to the Tier 1 ROD, alternatives outside the selected corridor may be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Interchange location and design, access to abutting properties, and location of grade separations with intersecting roads will be determined in the Tier 2 EISs.

Scoping will be initiated individually for each Tier 2 section but will be coordinated to address similar issues simultaneously when possible. The appropriate federal and state resource agencies will be included in this ongoing process. The public will also have opportunities to comment during the scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address all six Tier 2 sections will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C., 315; 49 CFR 1.48.

Issued on: April 22, 2004.

Anthony M. DeSimone,

Environmental Engineer, Federal Highway Administration, Indianapolis, Indiana.

[FR Doc. 04–9770 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 2 Environmental Impact Statement: Morgan, Johnson and Marion Counties, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 environmental impact statement (EIS) will be prepared for the proposed Section 6, located in Morgan, Johnson and Marion Counties, Indiana, of the Evansville-to-Indianapolis Interstate 69 (I–69) highway.

FOR FURTHER INFORMATION CONTACT: Anthony M. DeSimone, Environmental Engineer, Federal Highway Administration, Indiana Division, 575 N. Pennsylvania Avenue, Room 254, Indianapolis, Indiana 46204, Telephone (317) 226–5307 or Lyle Sadler, Project Manager, Indiana Department of Transportation, Room N855, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 233–6972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare a Tier 2 EIS on a proposal to build Section 6 of the Evansville-to-Indianapolis I–69 highway. Section 6 is located in Morgan, Johnson and Marion Counties, Indiana. The proposed action would involve the construction of an interstate highway basically following State Route (SR) 37 from SR 39 south of Martinsville and proceeding north for approximately 25.9 miles to Interstate 465 in Indianapolis.

I–69 (formerly known as Corridor 18) is a strategic, high priority highway serving the east-central United States. I–69 is planned to be a continuous north-south corridor linking Canada, the United States and Mexico. FHWA has identified 32 separate sections of independent utility (SIUs) for the national I–69 corridor. The Evansville-to-Indianapolis section of I–69 has been designated by FHWA as SIU #3.

The FHWA approved the Record of Decision (ROD) on the Tier 1 Final EIS for the I–69 SIU #3 on March 24, 2004. The purpose of the Tier 1 study was to resolve: (1) Whether or not to complete I–69 in Southwestern Indiana; and if so, (2) the selection of a corridor for I–69 between Evansville and Indianapolis.

FHWA and INDOT have consulted extensively with environmental resource agencies about the level of detail needed in the Tier 1 process in order to provide a basis for informed decision-making at this stage. The consultation began in early 1999, before a decision had been made to proceed with a tiered study and continued throughout the entire Tier 1 process.

Extensive public involvement was included in the development of the Tier 1 EIS at many stages including Purpose and Need, alternatives development and screening and final selection. Twelve build alternatives and the No Build Alternative were considered under detailed analysis. Of these, Alternative 3C was selected as the single Preferred Alternative in the Tier 1 Final EIS.

The Tier 1 ROD for the I–69 SIU #3 included the selection of a variable width corridor, generally 2000 feet wide, in which to build an Interstate highway that connects the following points in Indiana: Evansville, Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, Martinsville and Indianapolis. The approved corridor is approximately 142 miles long. The Tier 1 ROD approved termini for six Tier 2 Sections within the approved corridor, and stated that a separate EIS would be prepared for each Tier 2 section. Each Tier 2 EIS will be used to select the specific alignment of the proposed action and to determine mitigation measures within that section.

The overall purpose of I–69 SIU #3, as defined in the Tier 1 EIS, is to: Strengthen the transportation network in Southwest Indiana; Support Economic Development in Southwest Indiana; and Complete the portion of the National I–69 project between Evansville and Indianapolis. Each Tier 2 section will contribute to achieving the overall goals of I–69 SIU #3, and also will serve localized objectives, which were discussed in the Tier 1 Final EIS and will be further defined in each Tier 2 EIS.

The range of alternatives appropriate for each Tier 2 EIS will be determined for that section in consultation with resource agencies. Consideration of the No Build alternative will be included as a baseline for analysis, in accordance with applicable regulations. Alternatives generally will be located within the corridor approved in the Tier 1 ROD. However, pursuant to the Tier 1 ROD, alternatives outside the selected corridor may be considered when necessary to avoid significant impacts within the corridor while still connecting the Tier 2 termini designated in the Tier 1 ROD. Interchange location and design, access to abutting properties, and location of grade separations with intersecting roads will be determined in the Tier 2 EISs.

Scoping will be initiated individually for each Tier 2 section but will be

coordinated to address similar issues simultaneously when possible. The appropriate federal and state resource agencies will be included in this ongoing process. The public will also have opportunities to comment during the scoping process and other stages throughout the development of the proposed project. A date for a scoping meeting for regulatory agencies to address all six Tier 2 sections will be established at a later date. A public scoping meeting for this Tier 2 section will also be scheduled at a later date.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 2 EIS should be directed to the FHWA or the INDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12732 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 22, 2004.

Anthony M. DeSimone,

Environmental Engineer, Federal Highway Administration, Indianapolis, Indiana.

[FR Doc. 04–9771 Filed 4–28–04; 8:45 am]

BILLING CODE 4910–22–M

Federal Register

Thursday,
April 29, 2004

Part V

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 732, 736, et al.
Revision of Export and Reexport Restrictions on Libya; Interim Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 740, 742, 744, 746, 762, and 772

[Docket No. 040422128–4128–01]

RIN 0694—AD14

Revision of Export and Reexport Restrictions on Libya

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement the President's April 23, 2004, decision to revise United States sanctions against Libya. This rule also implements the transfer to the Department of Commerce from the Department of Treasury of the licensing jurisdiction for exports to Libya of items subject to the EAR.

DATES: This rule is effective April 29, 2004. Comments must be received on or before June 1, 2004.

ADDRESSES: Written comments should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to e-mail: *squarter@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone: (202) 482-4252, or e-mail: *jroberts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2004, in response to Libya's continued effort to completely dismantle its weapons of mass destruction and missile programs, and adhere to its renunciation of terrorism, the President announced the termination of the application of the Iran and Libya Sanctions Act with respect to Libya. Also, the Treasury Department modified sanctions imposed on U.S. firms and individuals under the authority of the International Emergency Economic Powers Act to allow the resumption of most commercial activities, financial transactions, and investments. This rule sets forth the new export control policy for exports (and reexports) to Libya under the licensing responsibility of the Department of Commerce, Bureau of Industry and Security (BIS).

Previous Licensing Regime

Since January 1986, in response to Libya's repeated use and support of terrorism against the United States, other countries, and innocent persons, the U.S. has maintained economic sanctions against Libya through the Libyan Sanctions Regulations (31 CFR Part 550) and the Export Administration Regulations (15 CFR Part 730 *et seq.*). The Department of the Treasury and the Department of Commerce shared licensing responsibility for proposed U.S. exports and reexports to Libya. The Department of the Treasury's Office of Foreign Assets Control (OFAC) had licensing jurisdiction for exports to Libya, including transshipments via third countries. Authorization granted by OFAC constituted authorization under the EAR. BIS had licensing jurisdiction for reexports of U.S.-origin items to Libya.

Overview: New Licensing Policy for Exports and Reexports to Libya

License Requirements for Exports and Reexports to Libya

Under the new policy established by this Rule, BIS will require a license for the export or reexport of most items on the Commerce Control List (CCL) to Libya. This requirement applies to the export or reexport of all items under the jurisdiction of the Department of Commerce that are on the multilateral export control regime lists: the Wassenaar Arrangement (reason for control: National Security—NS), the Nuclear Suppliers' Group (reason for control: Nuclear Nonproliferation—NP), the Australia Group (reasons for control: Chemical and Biological Weapons—CB) and the Missile Technology Control Regime (reason for control: Missile Technology—MT).

A license requirement also applies to items unilaterally controlled for crime control (CC) or regional stability (RS) reasons.

In addition, a license requirement applies to most U.S.-origin items unilaterally controlled for anti-terrorism (AT) reasons, as set forth specifically in new § 742.20 of the EAR.

The license requirements described above are reflected in the relevant columns of the Country Chart in Supplement No. 1 to part 738 of the EAR. BIS also will require a license for certain categories of items that are controlled for reasons not included on the Country Chart: encryption (EI), short supply (SS), Chemical Weapons (CW), Computers (XP), and Significant Items (SI).

Items subject to the EAR but not specifically listed on the CCL—referred to as EAR99 items—do not require an export or reexport license to Libya. This rule, however, does not relieve exporters and others of their responsibility to comply with obligations under the end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative (EPCI), as set forth in Part 744 of the EAR.

Licensing Policy

As set forth in new § 742.20 of the EAR, a general policy of denial will apply to applications for exports or reexports of the following items to Libya: items controlled for chemical and biological weapons proliferation reasons; military-related items controlled for national security reasons; items that are controlled for missile proliferation reasons; cryptographic, cryptoanalytic, and cryptologic items controlled for national security reasons; explosives detection equipment controlled under Export Control Classification Number (ECCN) 2A983; "Software" (ECCN 2D983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983; "Technology" (ECCN 2E983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983; commercial charges and devices controlled under ECCN 1C992; ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997; and technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355. All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components will generally be denied, except that parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft will be reviewed on a case-by-case basis, with a presumption of approval.

Also, BIS will generally deny all applications for export and reexport to Libya of items controlled for AT (Column 1) reasons, and not described above, if such items are destined to military, police or intelligence end-users in Libya.

BIS will review, on a case-by-case basis, all other applications for exports or reexports to Libya under the

applicable licensing policy described in Part 742 of the EAR.

License Exceptions

Libya is presently listed in Country Groups D:2, D:3, D:4, E:1 and E:2, found in Supplement 1 to Part 740. This rule removes Libya from Country Group E:2. As a result, the following License Exceptions may be available, in whole or in part: TMP, RPL, GOV, GFT, TSU, BAG, and AVS. A specific transaction is eligible for a license exception only if it satisfies all of the terms and conditions of the relevant license exception and is not excluded by any of the restrictions that apply to all license exceptions, as set forth in the EAR (including, specifically, § 740.2 Restrictions on all License Exceptions).

Transition for Licenses Granted by OFAC

To facilitate a smooth transition of licensing responsibility from OFAC to BIS, this rule extends the validity of licenses issued by OFAC for exports to Libya. OFAC licenses in effect as of April 29, 2004, are hereby continued in accordance with their terms, except as modified by this Rule or by BIS, as if issued by the Department of Commerce. For those licenses with specified expiration dates, such dates will continue to apply. Licenses without specified expiration dates will be valid through May 1, 2005. Items licensed by OFAC and subsequently returned from Libya to the United States do not require further authorization from BIS. However, persons returning items that were previously exported to Libya under a specific license granted by OFAC to the United States are subject to a recordkeeping requirement set forth in Part 762 of the EAR.

In addition, items exported or reexported to Libya under a specific OFAC license may not be transferred within Libya to a new end-user without further authorization from BIS. Reexports of items to countries other than the United States from Libya including those previously authorized under OFAC licenses must conform with the relevant provisions of the EAR for the country to which the items are being reexported. In certain circumstances, such reexports may be eligible for a License Exception or may not require a license. Such reexports will also be subject to a recordkeeping requirement.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783) as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), continues the EAR in effect under the International Emergency Economic Powers Act. BIS amends the EAR in this rule under the provisions of the EAA as continued in effect under IEEPA and Executive Order 13222.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748 .

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, 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 by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations. Accordingly, the Department of Commerce (the Department) encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close June 1, 2004. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning this regulation will be maintained in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Industry and Security Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects

15 CFR Parts 732 and 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 736, 742, and 772

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 732, 736, 740, 742, 744, 746, 762, and 772 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for 15 CFR part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 732.1 [Amended]

■ 2. Section 732.1 is amended:

■ a. By revising the phrase "Cuba, Iran, Iraq, and Libya." in the next to last sentence of paragraph (d)(2) to read "Cuba, Iran, and Iraq."; and

■ b. By revising the phrase "embargoed countries (*e.g.*, Cuba, Iran, Iraq, and Libya)," in (d)(3) to read "countries subject to a comprehensive embargo (*e.g.*, Cuba, Iran, and Iraq),".

§ 732.2 [Amended]

■ 3. Section 732.2 is amended by revising the phrase "Your export or reexport destination for the direct product is Cuba, Libya," in paragraph (f)(1)(i) to read "Your export or reexport destination for the direct product is Cuba".

■ 4. Section 732.3 is amended:

■ a. By revising the phrase "Your export or reexport destination for the direct product is Cuba, Libya," in paragraph (f)(1)(i) to read "Your export or reexport destination for the direct product is Cuba";

■ b. By revising the phrase "If your destination for any item is Cuba, Iran, Iraq, Libya or Rwanda" in paragraph (i) to read "If your destination for any item is Cuba, Iran, Iraq or Rwanda"; and

■ c. By revising paragraph (d)(4) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(d) * * *

(4) *Destinations subject to embargo provisions.* The Country Chart does not apply to Cuba, Iran, and Iraq; and for those countries you should review the embargo provisions at part 746 of the EAR and may skip this step concerning the Country Chart. For Rwanda, the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

PART 736—[AMENDED]

■ 5. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347.

§ 736.2 [Amended]

■ 6. Section 736.2 is amended by revising the phrase "General Prohibition Three to Cuba, Libya," in paragraph (b)(3)(i) to read "General Prohibition Three to Cuba".

PART 738—[AMENDED]

■ 7. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 8. Supplement No. 1 to part 738 is amended by revising the entry for "Libya" to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Libya	X	X	X	X		X	X	X	X	X		X		X	X	

* * * * *

PART 740—[AMENDED]

■ 9. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 740.2 [Amended]

■ 10. Section 740.2 is amended by revising the phrase "The export or reexport is to an embargoed destination (Cuba, Iran, Iraq, and Libya)," in paragraph (a)(6) to read "The export or reexport is to an embargoed destination (Cuba, Iran, and Iraq),";

§ 740.9 [Amended]

■ 11. Section 740.9 is amended:

■ a. By revising the sentence "No foreign-origin items may be returned to Cuba or Libya." in paragraph (b)(3) to read "No foreign-origin items may be returned to Cuba.";

■ b. By revising the phrase "A destination in Cuba or Libya;" in paragraph (b)(4)(i) to read "A destination in Cuba;"; and

■ c. By revising the phrase "except Cuba, Iran, Iraq, Libya, and Sudan" in paragraph (c)(2) to read "except Cuba, Iran, Iraq, and Sudan".

§ 740.15 [Amended]

■ 12. Section 740.15 is amended by revising the phrase "to a country included in Country Group D:1, Cuba, or Libya," in paragraph (b)(2) to read "to a country included in Country Group D:1, Cuba,".

Supplement No. 1 to Part 740 [Amended]

■ 13. Supplement No. 1 to part 740 is amended:

■ a. By removing Libya from Country Group E:2; and

■ b. By revising footnote 1(a) to Country Group E to read "A comprehensive embargo against Cuba, Iran, Iraq, and Sudan; and".

PART 742—[AMENDED]

■ 14. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 15. Section 742.1 is amended:
■ a. By revising the heading *"Exports and reexports involving Cuba, Libya, Iraq, Iran, and the Bosnian Serb-controlled areas of Bosnia-Herzegovina" of paragraph (c) to read "Exports and reexports involving Cuba, Iran, and Iraq"*;
■ b. By revising the parenthetical phrase "(Cuba, Libya, Iraq, Iran and the Bosnian Serb-controlled areas of Bosnia-Herzegovina)." in paragraph (c) to read "(Cuba, Iran, and Iraq).";
■ c. By revising paragraph (d) to read as set forth below; and
■ d. By revising the phrase "certain exports to and for the use of certain foreign vessels or aircraft; and certain exports to all countries for Libya aircraft." in paragraph (e) to read "and certain exports to and for the use of certain foreign vessels and aircraft."

§ 742.1 Introduction

* * * * *

(d) *Anti-terrorism Controls on Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.* Commerce maintains anti-terrorism controls on Cuba, Iran, Libya, North Korea, Syria and Sudan under section 6(a) of the Export Administration Act. Items controlled under section 6(a) to Iran, Syria, Sudan, North Korea and Libya are described in §§ 742.8, 742.9, 742.10, 742.19 and 742.20, respectively, and in Supplement No. 2 to part 742. Commerce also maintains controls under section 6(j) of the EAA to Cuba, Libya, Iran, Iraq, North Korea, Sudan and Syria. Items controlled to these countries under EAA section 6(j) are also described in Supplement 2 to part 742. The Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before issuing a license for an item controlled under section 6(j) to Cuba, Libya, North Korea, Iran, Iraq, Sudan or Syria. As noted in paragraph (c) of this section, if you are exporting or reexporting to Cuba, Iran, or Iraq you should review part 746 of the EAR, Embargoes and Other Special Controls.

* * * * *

■ 16. Part 742 is amended by adding a new § 742.20 to read as follows:

§ 742.20 Anti-terrorism: Libya.

(a) *License requirements.* (1) If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, BIS requires a license for export and reexport to Libya for anti-terrorism purposes.

(2) The Secretary of State has designated Libya as a country whose government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy against terrorism, BIS maintains two types of anti-terrorism controls on the export and reexport to Libya of items described in Supplement No. 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742, if destined to military, police, intelligence or other end-users in Libya, are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Libya, as well as items to all end-users listed in (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of Supplement No. 2 to part 742, are controlled to Libya under section 6(a) of the EAA.

(b) *Licensing policy.* (1) Applications for export and reexport to all end-users in Libya of the following items will generally be denied:

(i) Items controlled for chemical and biological weapons proliferation reasons to any destination. These are items that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL.

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 or RS Column 2 in the Country Chart column of the "License Requirements" section in an ECCN on the CCL and are controlled by equipment or material entries ending in the number "18."

(iii) Items controlled for missile proliferation reasons to any destination. These are items that have an MT Column 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL.

(iv) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components, except that parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft will be reviewed on a case-by-case basis, with a presumption of approval. These are items controlled to any destination for national security and missile technology reasons and items controlled to Libya for anti-terrorism purposes. Such items contain an NS Column 1, NS Column 2, MT Column 1, or AT Column 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL. Note that, consistent with the general rule that applies to computing U.S. parts and components content incorporated into foreign made products, all aircraft-related items that require a license to Libya will be controlled U.S. content, except for ECCNs 6A998, 7A994, and 9A991.d, for purposes of such licensing requirements.

(v) Cryptographic, cryptoanalytic, and crypto-logic items controlled to any destination for national security reasons. Such items contain an AT Column 1 and an NS Column 1 or NS Column 2 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL.

(vi) Explosives detection equipment controlled under ECCN 2A983.

(vii) "Software" (ECCN 2D983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.

(viii) "Technology" (ECCN 2E983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.

(ix) Commercial charges and devices controlled under ECCN 1C992.

(x) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

(xi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

(2) Applications for export and reexport to Libya of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2), of this

section, applications for Libya will be considered on a case-by-case basis if:

(i) The U.S. content of foreign-produced commodities is 20% or less by value; or

(ii) The commodities are medical items.

Note to paragraph (b) of this section: Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content or the specifications and medical use of the equipment.

(4) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Libya, including its military logistics capability, or could enhance Libya's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

■ 17. Supplement No. 2 to part 742 is revised to read as follows:

SUPPLEMENT NO. 2 TO PART 742—ANTI-TERRORISM CONTROLS: IRAN, LIBYA, NORTH KOREA, SYRIA AND SUDAN CONTRACT SANCTITY DATES AND RELATED POLICIES

Note: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this Supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application. BIS will determine any applicable contract sanctity date at the time an application with relevant supporting documents is submitted.

(a) Terrorist-supporting countries. The Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria as countries whose governments have repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act (EAA).

(b) Items controlled under EAA sections 6(j) and 6(a). Whenever the Secretary of State determines that an export or reexport to any of these countries could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism, the item is subject to mandatory control under EAA section 6(j) and the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before a license for such an item may be issued.

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Libya, Iran, Iraq, North Korea, Sudan, or Syria of items described in paragraphs (c)(1) through (c)(5) of this Supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

(2) License applications for items controlled to designated terrorist-supporting countries under EAA section 6(a) will also be reviewed to determine whether the Congressional notification requirements of EAA section 6(j) apply.

(3) Items controlled for anti-terrorism reasons under section 6(a) to Iran, Libya, North Korea, Sudan, and Syria are:

(i) Items described in paragraphs (c)(1) through (c)(5) to non-sensitive end-users, and

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(44) of this Supplement; for Libya and Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of this Supplement.

(c) The license requirements and licensing policies for items controlled for anti-terrorism reasons to Iran, Syria, Sudan, North Korea, and Libya are generally described in §§ 742.8, 742.9, 742.10, 742.19, and 742.20 of this part, respectively. This Supplement provides guidance on licensing policies for Iran, Libya, North Korea, Syria, and Sudan and related contract sanctity dates that may be available for transactions benefitting from pre-existing contracts involving Iran, Syria, and Sudan. Exporters are advised that the Treasury Department's Office of Foreign Assets Control administers a comprehensive trade and investment embargo against Iran (See Executive Orders 12957, 12959 and 13059 of March 15, 1995, May 6, 1995 and August 19, 1997, respectively.) Exporters are further advised that exports and reexports to Iran of items that are listed on the CCL as requiring a license for national security or foreign policy reasons are subject to a policy of denial under the Iran-Iraq Arms Non-Proliferation Act of October 23, 1992 (50 U.S.C. 1701 note (1994)). Transactions involving Iran and benefitting from a contract that pre-dates October 23, 1992 may be considered under the applicable licensing policy in effect prior to that date.

(1) *All items subject to national security controls.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of items valued at $7 million or more: January 23, 1984.

(B) Contract sanctity date for military end-users or end-uses of all other national security controlled items: September 28, 1984.

(C) Contract sanctity date for non-military end-users or end-uses: August 28, 1991, *unless* otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(ii) *Syria.* Applications for military end-users or military end-uses in Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available for items valued at $7 million or more to military end-users or end-uses. The contract sanctity date for all other items for all end-users: December 16, 1986.

(iii) *Sudan.* Applications for military end-users or military end-uses in Sudan will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. Contract sanctity date: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or military end-uses in Libya will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(2) *All items subject to chemical and biological weapons proliferation controls.* Applications for all end-users in Iran, Libya, North Korea, Syria, or Sudan of these items will generally be denied. See Supplement No. 1 to part 742 for contract sanctity dates for Iran and Syria. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993), or unless an earlier date for any item is listed in Supplement 1 to part 742.

(3) *All items subject to missile proliferation controls (MTCR).* Applications for all end-users in Iran, Libya, North Korea, Syria, or Sudan will generally be denied. Contract sanctity provisions for Iran and Syria are not available. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(4) *All items subject to nuclear weapons proliferation controls (NRL).*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. No contract sanctity date is available.

(ii) *Syria.* Applications for military end-users or end-uses to Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a

case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available.

(iii) *Sudan.* Applications for military end-users or end-uses in Sudan will generally be denied. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available.

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(v) *Libya.* Applications for military end-users or end-uses to Libya will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(5) *All military-related items, i.e., applications for export and reexport of items controlled by CCL entries ending with the number "18".*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: see paragraph (c)(1)(i) of this Supplement.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied. Contract sanctity date: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(v) *Libya.* Applications for all end-users in Libya will generally be denied.

(6) *All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more: January 23, 1984.

(B) Contract sanctity date for other helicopters and aircraft and gas turbine engines therefor: September 28, 1984.

(C) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A991.d: October 22, 1987.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied.

(A) There is no contract sanctity for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more; except that passenger aircraft, regardless of value, have a contract sanctity date of December 16, 1986, if destined for a regularly scheduled airline with assurance against military use.

(B) Contract sanctity date for helicopters with 10,000 lbs. empty weight or less: April 28, 1986.

(C) Contract sanctity date for other aircraft and gas turbine engines therefor: December 16, 1986.

(D) Contract sanctity date for helicopter or aircraft parts and components controlled by ECCN 9A991.d: August 28, 1991.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(v) *Libya.* Applications for all end-users in Libya will generally be denied.

(7) *Heavy duty, on-highway tractors.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(8) *Off-highway wheel tractors of carriage capacity 9t (10 tons) or more.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(9) *Large diesel engines (greater than 400 horsepower) and parts to power tank transporters.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(10) *Cryptographic, cryptoanalytic, and cryptologic equipment.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for all end-users in Syria will generally be denied. Contract sanctity date for cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for all end-users in Sudan of any such equipment will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of any such equipment will generally be denied.

(v) *Libya.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for all end-users in Libya will generally be denied.

(11) *Navigation, direction finding, and radar equipment.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied.

Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan of such equipment will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(12) *Electronic test equipment.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of electronic test equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other electronic test equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for electronic test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other electronic test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis:

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(13) *Mobile communications equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of mobile communications equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all end-users of all other mobile communications equipment: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for mobile communications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other mobile communications equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan of such equipment will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(14) *Acoustic underwater detection equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other acoustic underwater detection equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991, to all end-users. Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses to Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of such equipment will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(15) *Portable electric power generator.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of such equipment will be considered on a case-by-case basis.

(16) *Vessels and boats, including inflatable boats.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of vessels and boats that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other vessels and boats for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for national security-controlled vessels and boats. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for vessels and boats that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied.

Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of these items will be considered on a case-by-case basis.

(v) *Libya.* A license is required for national security-controlled vessels and boats. Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(17) *Marine and submarine engines (outboard/inboard, regardless of horsepower).*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of marine and submarine engines that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for outboard engines of 45 HP or more for all end-users: September 28, 1984.

(C) Contract sanctity date for all other marine and submarine engines for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all marine and submarine engines subject to national security controls to all end-users. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for marine and submarine engines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of these items will be considered on a case-by-case basis.

(v) *Libya.* A license is required for all marine and submarine engines subject to national security controls to all end-users. Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(18) *Underwater photographic equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of underwater photographic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other underwater photographic equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for underwater photographic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) *of this Supplement.*

(B) Contract sanctity date for all other underwater photographic equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(19) *Submersible systems.*

(i) *Iran.* Applications for all end-users in Iran of such systems will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of submersible systems that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other submersible systems for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for submersible systems that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other submersible systems: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies(*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(20) *Scuba gear and related equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. No contract sanctity is available for such items to Iran.

(ii) *Sudan.* Applications for military end-users and end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(21) *Pressurized aircraft breathing equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(22) *Computer numerically controlled machine tools.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other computer numerically controlled machine tools for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other computer numerically controlled machine tools: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(23) *Vibration test equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other vibration test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(24) *Digital computers with a CTP of 6 or above, assemblies, related equipment, equipment for development or production of magnetic and optical storage equipment, and materials for fabrication of head/disk assemblies.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity dates for military end-users and end-uses of items that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other items for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity dates for items that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other items: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.*

(A) Computers with a CTP above 2000 MTOPS: Applications for all end-users will generally be denied.

(B) Computers with a CTP at or below 2000 MTOPS: Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(25) *Telecommunications equipment.*

(i) A license is required for the following telecommunications equipment:

(A) Radio relay systems or equipment operating at a frequency equal to or greater than 19.7 GHz or "spectral efficiency" greater than 3 bit/s/Hz;

(B) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm;

(C) "Telecommunications transmission systems" or equipment with a "digital transfer rate" at the highest multiplex level exceeding 45 Mb/s.

(ii) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(iii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other telecommunications equipment: August 28, 1991.

(iv) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(v) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(vi) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(26) *Microprocessors.*

(i) Operating at a clock speed over 25 MHz.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(*1*) Contract sanctity date for military end-users and end-uses of microprocessors that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(*2*) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(B) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for microprocessors that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(*2*) Contract sanctity date for all other microprocessors: August 28, 1991.

(C) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(D) *Libya.* Applications for military end-users or for military end-uses in Libya of

these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(ii) With a CTP of 550 MTOPS or above.

(A) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(B) [RESERVED]

(27) *Semiconductor manufacturing equipment.* For Iran, Syria, Sudan, North Korea, or Libya a license is required for all such equipment described in ECCNs 3B001 and 3B991.

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other semiconductor manufacturing equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(28) *Software specially designed for the computer-aided design and manufacture of integrated circuits.*

(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(29) *Packet switches. Equipment described in ECCN 5A991.c.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses in Iran of packet switches that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other packet switches for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for packet switches that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other packet switches: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(30) *Specially designed software for air traffic control applications that uses any digital signal processing techniques for automatic target tracking or that has a facility for electronic tracking.*

(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(31) *Gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of gravity meters that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such gravity meters for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for gravity meters that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other such gravity meters: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(32) *Magnetometers with a sensitivity lower (better) than 1.0 nt rms per square root Hertz.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such magnetometers for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such magnetometers: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(33) *Fluorocarbon compounds described in ECCN 1C006.d for cooling fluids for radar.*

(i) *Iran.* Applications for all end-users in Iran of such compounds will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such fluorocarbon compounds for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such fluorocarbon compounds: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(34) *High strength organic and inorganic fibers (kevlar) described in ECCN 1C210.*

(i) *Iran.* Applications for all end-users in Iran of such fibers will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other high strength organic and inorganic fibers (kevlar) described in ECCN 1C210: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.*Applications for military end-users or for military end-uses in Libya of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(35) *Machines described in ECCNs 2B003 and 2B993 for cutting gears up to 1.25 meters in diameter.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of

these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(36) *Aircraft skin and spar milling machines.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other aircraft skin and spar milling machines to all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other aircraft skin and spar milling machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(37) *Manual dimensional inspection machines described in ECCN 2B996.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other manual dimensional inspection machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for such manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such manual dimensional inspection machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(38) *Robots capable of employing feedback information in real time processing to generate or modify programs.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991: see paragraphs (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by case basis.

(A) Contract sanctity date for such robots that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by case basis.

(39) *Explosives detection equipment described in ECCN 2A983.*

(i) Explosives detection equipment described in ECCN 2A983, controlled prior to April 3, 2003 under ECCN 2A993.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.

(B) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.

(C) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.

(D) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(E) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(ii) Explosives detection equipment described in ECCN 2A983, not controlled prior to April 3, 2003 under ECCN 2A993.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(B) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(C) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(D) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(E) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(40) *"Software" described in ECCN 2D983 specially designed or modified for the "development", "production" or "use" of explosives detection equipment.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(41) *"Technology" described in ECCN 2E983 specially designed or modified for the "development", "production" or "use" of explosives detection equipment.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(42) *Production technology controlled under ECCN 1C355 on the CCL.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(43) *Commercial Charges and devices controlled under ECCN 1C992 on the CCL.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(44) *Ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997 on the CCL.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: June 15, 2001.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: June 15, 2001.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(45) *Specific processing equipment, materials and software controlled under ECCNs 0A999, 0B999, 0D999, 1A999, 1C999, 1D999, 2A999, 2B999, 3A999, and 6A999 on the CCL.*

(i) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(ii) [Reserved]

PART 744—[AMENDED]

■ 18. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 744.8 [Removed and reserved]

■ 19. Part 744 is amended by removing and reserving § 744.8.

PART 746—[AMENDED]

■ 20. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 746.1 [Amended]

■ 21. Section 746.1 is amended:

■ a. By revising the phrase "currently Cuba, Libya, Iran, and Iraq." in paragraph (a) to read "currently Cuba, Iran, and Iraq."; and

■ b. By revising the header "Cuba and Libya." for paragraph (a)(1) to read "Cuba."; and

■ c. By revising the phrase "require a license to Cuba or Libya." in paragraph (a)(1) to read "require a license to Cuba."

§ 746.4 [Removed and reserved]

■ 22. Part 746 is amended by removing and reserving § 746.4.

PART 762—[AMENDED]

■ 23. The authority citation for 15 CFR part 762 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, 3 CFR, 2003 Comp., p. 328.

■ 24. Section 762.2 is amended by adding new paragraph (c) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(c) *Special recordkeeping requirement.*

(1) *Libya.* Persons in receipt of a specific license granted by the Department of the Treasury's Office of Foreign Assets Control (OFAC) for the export to Libya of any item subject to the EAR must maintain a record of those items transferred to Libya pursuant to such specific license and record when the items are consumed or destroyed in the normal course of their use in Libya, reexported to a third country not requiring further authorization from BIS, or returned to the United States. This requirement applies only to items subject to a license requirement under the EAR for export to Libya as of April 29, 2004. These records must include the following information:

(i) Date of export or reexport and related details (including means of transport);

(ii) Description of items (including ECCN) and value of items in U.S. Dollars;

(iii) Description of proposed end-use and locations in Libya where items are intended to be used;

(iv) Parties other than specific OFAC licensee who may be given temporary access to the items; and

(v) Date of consumption or destruction, if the items are consumed or destroyed in the normal course of their use in Libya, or the date of reexport to a third country not requiring further authorization from BIS, or return to the United States.

(2) [Reserved]

PART 772—[AMENDED]

■ 25. The authority citation for 15 CFR part 772 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, 3 CFR, 2003 Comp., p. 328.

§ 772.1 [Amended]

■ 26. Section 772.1 is amended:

■ a. By revising the phrase "export license applications to Iran, Sudan and Libya" in Note 3 following the definition of *Agricultural commodities* to read "export license applications to Iran and Sudan";

■ b. By revising the phrase "for export to Iran, Libya and Sudan" in the paragraph entitled *Medical devices* to read "for export to Iran and Sudan"; and

■ c. By revising the phrase "for export to Iran, Libya and Sudan" in the paragraph entitled *Medicines* to read "for export to Iran and Sudan".

Dated: April 23, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–9717 Filed 4–27–04; 1:21 pm]

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Thursday, April 29, 2004

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FEDERAL REGISTER PAGES AND DATE, APRIL

17033–17282	1
17283–17584	2
17585–17898	5
17899–18244	6
18245–18470	7
18471–18800	8
18801–19076	9
19077–19310	12
19311–19752	13
19753–19920	14
19921–20536	15
20537–20804	16
20805–21038	19
21039–21392	20
21393–21688	21
21689–21940	22
21941–22376	23
22377–22716	26
22717–23086	27
23087–23414	28
23415–23640	29

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

51	18801

3 CFR

Proclamations:	
7765	18465
7766	18467
7767	18469
7768	19077
7769	19307
7770	19751
7771	20537
7772	21683
7773	21685
7774	21687
7775	23085
Executive Orders:	
13334	19917
Administrative Orders:	
Presidential Determinations:	
No. 2004–26 of March 24, 2004	21675
No. 2004–27 of April 6, 2004	21677
No. 2004–28 of April 14, 2004	21679

5 CFR

537	21039
Proposed Rules:	
1650	18294
1653	18294
1655	18294
1690	18294

7 CFR

301	21039, 23415
319	21941
457	23417
701	22377
772	18471
905	19079
916	19753
917	19753
925	21689
929	18803
956	22377
979	21947
981	21692
982	19082
983	17844
984	17899
989	21695
1000	21950
1001	21950
1005	21950
1006	21950
1007	21950
1030	21950
1032	21950
1033	21950
1124	21950
1126	21950
1131	21950
1951	23418
4284	23418
Proposed Rules:	
28	22458
272	20724
273	20724
301	19950
319	23451
330	17984
761	20834
762	20834
763	20834
764	20834
765	20834
766	20834
767	20834
768	20834
769	20834
926	19118
929	23330
1033	19292
1124	18834
1150	22690
1160	22690
1205	22690
1207	22690
1209	22690
1210	22690
1215	22690
1216	21439, 22690
1218	22690
1219	22690
1220	22690
1230	22690
1240	22690
1250	22690
1260	22690
1280	22690

8 CFR

103	20528
Proposed Rules:	
103	18296

9 CFR

1	17899
2	17899
3	17899
53	23087
77	20805
93	21040
94	21042
98	21042
301	18245
309	18245
310	18245
311	18245
313	18245
318	18245
319	18245

320.....18245, 21047
381.....21047

10 CFR

170.....22664
171.....22664

Proposed Rules:

9.....22737
71.....21978

11 CFR

Proposed Rules:

110.....18301, 18841

12 CFR

3.....22382
208.....22382
225.....22382
229.....19921
325.....22382
335.....19085
567.....22382
609.....21699
611.....21699
612.....21699
614.....21699
615.....21699
617.....21699
1700.....18808

Proposed Rules:

32.....21978
41.....23380
222.....19123, 23380
303.....20558
334.....23380
571.....23380
701.....21439
705.....21443
717.....23380
742.....21439
1710.....19126

13 CFR

102.....21952

14 CFR

11.....22385
23.....22717
25.....18246, 19311, 22720
39.....17033, 17034, 17901, 17903, 17905, 17906, 17909, 17911, 17913, 17914, 17915, 17917, 17918, 17919, 17921, 17924, 17925, 18250, 19313, 19618, 19756, 19758, 19759, 20539, 20809, 20811, 20815, 20817, 20818, 21049, 21393, 21395, 21397, 21401, 21402, 21699, 21701, 22386, 22388, 22389, 22392, 23090, 23093, 23095, 23098, 23099
71.....17283, 19314, 19315, 19316, 19317, 19318, 19319, 19922, 19923, 20820, 20821, 20822, 20823, 21404, 22394, 22395, 22396, 22397, 22398, 22599, 22730
73.....18471, 21053
77.....22732
91.....21953
97.....17284
121.....19761
135.....18472
1260.....21703

Proposed Rules:

39.....17072, 17073, 17076, 17077, 17080, 17082, 17084, 17086, 17088, 17091, 17095, 17097, 17101, 17103, 17105, 17107, 17109, 17111, 17113, 17115, 17610, 17984, 17987, 17989, 17991, 17993, 17996, 18304, 18306, 18843, 18845, 18848, 19132, 19135, 19777, 19950, 19952, 19954, 19956, 20566, 21444, 21766, 21768, 21771, 21774, 22459, 22461, 22743, 22745, 23161, 23456, 23458
61.....21073
71.....18308, 18309, 18508, 19359, 19360, 19958, 19960, 19961, 19962, 19963, 20834, 20835, 20837, 21447, 21448, 21449, 23161
91.....21073
119.....21073
121.....21073
135.....21073
136.....21073
399.....21450

15 CFR

732.....23626
736.....23626
738.....21055
740.....21055, 23626
742.....23626
744.....23626
746.....23626
762.....23626
770.....23598
772.....23626
774.....17926, 23598

16 CFR

316.....21024
1210.....19762

Proposed Rules:

316.....18851
603.....23370
613.....23370
614.....23370
682.....21388
801.....18686
802.....18686
803.....18686

17 CFR

200.....21057
232.....21954, 22704
239.....22300, 22704
249.....22704
259.....22704
269.....22704
274.....22300, 22704

Proposed Rules:

30.....17998
230.....21650
232.....17864
239.....21650
240.....17864, 21650
249.....17864, 21650

18 CFR

358.....23562

Proposed Rules:

1.....21777

19 CFR

Proposed Rules:

24.....18296

20 CFR

404.....19924
641.....19014

Proposed Rules:

404.....18310

21 CFR

Ch. 1.....17285
1.....19763, 19765, 19766
20.....19766
173.....17297
201.....18255
206.....18728
250.....18728
312.....17927
314.....18728
520.....21956
522.....17585
573.....19320
600.....18728
601.....18728
606.....18255
610.....18255
807.....18472
1308.....17034

Proposed Rules:

Ch. 1.....17615
59.....23460
101.....20838
201.....21778
208.....21778
209.....21778

22 CFR

126.....18810

24 CFR

Proposed Rules:

30.....19906
200.....21036
203.....19906
320.....19746

25 CFR

Proposed Rules:

30.....20839
37.....20839
39.....20839
42.....20839
44.....20839
47.....20839

26 CFR

1.....17586, 21405, 22399

Proposed Rules:

1.....17117, 17477, 18314, 21454, 22463
20.....20840
301.....17117, 20840

27 CFR

9.....20823

28 CFR

803.....21058
804.....21059

29 CFR

35.....17570
541.....22122
1952.....20826, 20828
1981.....17587
4022.....19925
4044.....19925, 22599

Proposed Rules:

1910.....17774
1917.....19361
1918.....19361
1926.....20840, 22748

30 CFR

75.....17480
925.....19927
931.....19321

Proposed Rules:

200.....19137
917.....21075
948.....23473

31 CFR

1.....17298
103.....19093, 19098
240.....17272

32 CFR

199.....17035
719.....20540
725.....20540
727.....20541
752.....20542
1602.....20542
1605.....20542
1609.....20542
1656.....20542
2001.....17052

Proposed Rules:

519.....18314

33 CFR

101.....17927
104.....17927
117.....17055, 17057, 17595, 17597, 18473, 19103, 19325, 20544, 21061, 21062, 21064, 21956, 22733
147.....19933, 21065
165.....18473, 19326, 21067, 23101
167.....18476
334.....20545, 20546, 20547
402.....18811

Proposed Rules:

100.....18002
110.....17119, 20568
117.....17122, 17616, 17618, 18004, 22749
165.....18794, 18797, 21981, 22751, 22753
334.....20570

34 CFR

99.....21670

36 CFR

223.....18813
400.....17928

Proposed Rules:

13.....17355
242.....19964
292.....21796

37 CFR

1.....21704
401.....17299

38 CFR

20.....19935, 21068

Proposed Rules:

3.....22757
4.....22757
17.....21075

39 CFR

111.....17059, 22401, 23436

Proposed Rules:
111 .....19363, 20841, 21455, 22464

40 CFR

9.....19105, 22402
51.....21604
52 .....17302, 17929, 18815, 19937, 19939, 20548, 21711, 21713, 21715, 21717, 21731, 22441, 22443, 22445, 22447, 23103, 23109, 23110
63 .....19106, 19734, 19943, 20968, 21737, 21906, 22602
68.....18819
78.....21604
80.....17932
81 .....20550, 21731, 22447
97.....21604
141.....21958
142.....21958
143.....21958
147.....18478
153.....23113
166.....17303
168.....23113
180 .....17304, 18255, 18263, 18275, 18480, 19767, 21959, 23113, 23142, 23146
257.....17308
261.....21754
262.....21737
264.....22602
265.....22602
271.....21962
300.....22453
745.....18489
799.....22402

Proposed Rules:
52 .....17368, 17374, 18006, 18319, 18323, 18853, 19968, 21482, 21797, 21799, 21800, 21983, 22470, 22471, 23162
63 .....18327, 18338, 19139, 19743, 19968, 21198
81 .....17374, 18853, 21800, 22471
86.....17532
122.....18166
136.....18166
141.....18166
143.....18166
180.....23163
257.....17380
261.....21800
262.....21800
264.....21198
265.....21198
266.....21198
270.....21198
271.....21077, 21198
300.....19363
403.....18166
430.....18166
450.....22472
455.....18166
465.....18166

42 CFR

411.....17933
414.....17935
424.....17933, 21963

Proposed Rules:
50.....20778
93.....20778

44 CFR

64.....17310
65 .....17597, 17600, 21966, 21969
67 .....17312, 17606, 17608, 21973

Proposed Rules:
67 .....17381, 17619, 17620, 21988, 21989, 21992

45 CFR

1206.....19110
2551.....20829
2552.....19774
2553.....20830

46 CFR

515.....19774

47 CFR

0.....23151
1.....17946
2 .....18275, 18832, 21760
22.....17063
24.....17063
25 .....18275, 21761, 23155
27.....17946
43.....23151
63.....23151
64.....23151
73 .....17070, 17071, 19328, 20554, 20555, 20556, 22734
74.....17946
80.....19947
90.....17946, 17959
97.....21760
101.....17946

Proposed Rules:
0.....17124
1 .....17124, 18006, 19779
11.....18857
13.....18007
54.....18508
61.....17124, 18006
64.....20845
69.....17124, 18006
73 .....17124, 17125, 18860, 19363, 19364, 20571, 23166
80.....18007
87.....19140

48 CFR

Ch. 1.....17740, 17770
1.....17741
2.....17741, 17764
4.....17768
8.....17741
15.....17768
29.....17769
31.....17764
45.....17741
49.....17741
52.....17741, 17770
53.....17741
601.....19329
602.....19329
603.....19329
604.....19329
605.....19329
606.....19329
609.....19329
611.....19329
612.....19329
613.....19329
616.....19329
617.....19329
619.....19329
622.....19329
623.....19329
625.....19329
626.....19329
628.....19329
630.....19329
632.....19329
636.....19329
637.....19329
642.....19329
651.....19329
652.....19329
653.....19329
1801.....21761
1803.....21761
1804.....21761
1805.....21761
1806.....21761
1807.....21761
1808.....21761
1809.....21761
1811.....21761
1812.....21761
1813.....21761
1814.....21761
1815.....21761
1816.....21761
1817.....21761
1819.....21761
1822.....21761
1823.....21761
1824.....21761
1825.....21761
2901.....22990
2902.....22990
2903.....22990
2904.....22990
2905.....22990
2906.....22990
2907.....22990
2908.....22990
2909.....22990
2910.....22990
2911.....22990
2912.....22990
2913.....22990
2914.....22990
2915.....22990
2916.....22990
2917.....22990
2918.....22990
2919.....22990
2920.....22990
2921.....22990
2922.....22990
2923.....22990
2924.....22990
2925.....22990
2926.....22990
2927.....22990
2928.....22990
2929.....22990
2930.....22990
2931.....22990
2932.....22990
2933.....22990
2934.....22990
2935.....22990
2936.....22990
2937.....22990
2938.....22990
2939.....22990
2940.....22990
2941.....22990
2942.....22990
2943.....22990
2944.....22990
2945.....22990
2946.....22990
2947.....22990
2948.....22990
2949.....22990
2950.....22990
2951.....22990
2952.....22990
2953.....22990

Proposed Rules:
19.....18244
45.....17584
52.....17584
217.....21996
219.....21996, 21997
1842.....21804
1843.....21804
1844.....21804
1845.....21804
1846.....21804
1847.....21804
1848.....21804
1849.....21804
1850.....21804
1851.....21804

49 CFR

172.....20831
192.....18228, 21975
219.....19270
375.....17313
512.....21409
541.....17960
542.....17960
543.....17960
571.....18496
579.....20556
595.....21069
1104.....18498
1572.....17969

Proposed Rules:
541.....18010
544.....18861
571 .....17622, 18015, 22483
572.....17622

50 CFR

17 .....18279, 18499, 21425
92.....17318
216.....17973
223.....18444
224.....18444
229.....21070
622.....19346
648 .....17980, 18291, 22454, 22734, 22906
660 .....17329, 18444, 19347, 23440
679 .....17982, 19116, 19358, 19776, 20833, 21975, 23160, 23450

Proposed Rules:
14.....21806
17 .....17383, 17627, 17634, 18016, 18018, 18035, 18515, 18516, 18770, 19364, 19620, 21484, 23024, 23254
100.....19964
223.....20571
229.....19365, 23477
300.....19147
635.....19147
648.....19805

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 29, 2004

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Fire ant, imported; published 4-29-04

COMMERCE DEPARTMENT
Industry and Security Bureau
Export administration regulations:
Commerce Control List—
Wassenaar Arrangement Plenary Agreement implementation; Categories 1-7 revisions for national security reasons; NUMA technology interpretation; published 4-29-04
Libya; export and re-export restrictions revision; published 4-29-04

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico coastal migratory pelagic resources; stock status determination criteria; published 3-30-04
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; published 4-29-04

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Texas; published 3-30-04

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; published 4-13-04

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
HOME Investment Partnerships Program:
American Dream Downpayment Initiative; published 3-30-04

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Air traffic security control; published 3-30-04
Airworthiness directives:
Boeing; published 3-25-04
Bombardier; published 3-25-04
Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 3-25-04
McDonnell Douglas; published 3-25-04

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
New drivers; safety performance history; published 3-30-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Milk marketing orders:
Northeast and other marketing areas; comments due by 5-3-04; published 3-2-04 [FR 04-04724]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle—
State and area classifications; comments due by 5-3-04; published 3-2-04 [FR 04-04599]
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 5-7-04; published 3-8-04 [FR 04-05128]
Plant-related quarantine, foreign:
Karnal bunt; wheat importation; comments due by 5-3-04; published 3-3-04 [FR 04-04723]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Direct Farm Loan Programs; regulatory streamlining; comments due by 5-4-04; published 4-19-04 [FR 04-08772]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Bovine spongiform encephalopathy policies—
Preliminary regulatory impact analysis for interim regulations; availability and comment request; comments due by 5-7-04; published 4-7-04 [FR 04-07925]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Electric System Emergency Restoration Plan; comments due by 5-3-04; published 3-19-04 [FR 04-06167]

AGRICULTURE DEPARTMENT
Religious organizations; participation in USDA programs; equal treatment for faith-based organizations; comments due by 5-4-04; published 3-5-04 [FR 04-05092]

AMERICAN BATTLE MONUMENTS COMMISSION
Employee responsibilities and conduct; removal of superseded regulations and addition of residual cross references; comments due by 5-5-04; published 4-6-04 [FR 04-07675]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation requirements—
Shrimp trawling requirements; Atlantic Ocean and Gulf of Mexico; turtle excluder devices; comments due by 5-3-04; published 4-16-04 [FR 04-08698]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Hazardous material safety data; comments due by 5-3-04; published 3-3-04 [FR 04-04749]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Pulp and paper industry; comments due by 5-6-04; published 4-15-04 [FR 04-08582]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Washington; comments due by 5-3-04; published 4-2-04 [FR 04-07470]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Pennsylvania; comments due by 5-3-04; published 4-2-04 [FR 04-07471]
Air quality implementation plans; approval and promulgation; various States:
Florida; comments due by 5-6-04; published 4-6-04 [FR 04-07646]
New Jersey; comments due by 5-7-04; published 4-7-04 [FR 04-07863]
New York; comments due by 5-7-04; published 4-7-04 [FR 04-07862]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Gellan gum; comments due by 5-3-04; published 3-3-04 [FR 04-04707]
Yeast extract hydrolysate from saccharomyces cerevisiae; comments due by 5-3-04; published 3-3-04 [FR 04-04706]

LIST OF PUBLIC LAWS

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S. 2057/P.L. 108–220

To require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel. (Apr. 22, 2004; 118 Stat. 618)

Last List April 15, 2004

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