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Federal Register
Vol. 65, No. 29
Friday, February 11, 2000

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 99–060N]

Recent Developments Regarding Beef Products Contaminated With *Escherichia coli* O157:H7; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on February 29, 2000, to discuss FSIS' policy regarding *Escherichia coli* (*E. coli*) O157:H7 and new information concerning the pathogen and its relation to human health. At this meeting, FSIS and other groups will present new data concerning the pathogen and new developments that may affect the Agency's policy. The purpose of this meeting is not to debate the policy that the Agency announced in January of 1999 (64 FR 2803) on the status of certain beef products contaminated with *E. coli* O157:H7 but to ensure that that policy is implemented based on the best available information and in a manner that will best protect public health. In addition, FSIS will allow time for comments and discussion regarding FSIS' testing procedures and other issues on *E. coli* O157:H7.

DATES: The meeting will be held February 29, 2000, from 9:00 a.m. to 5:00 p.m. Written comments must be received by April 11, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, telephone number: (703) 807–2000. To register for the meeting, contact Ms. Mary Gioglio by telephone at (202) 501–7244 or by FAX at (202) 501–7642. If a sign language interpreter or other special accommodation is necessary, contact Ms. Gioglio at the above numbers by February 18, 2000. If you are planning to present an oral comment at the meeting, please submit one original and two copies of the prepared comment to the FSIS Docket Clerk, Docket No. 99–060N, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Send one original and two copies of all other comments to the Docket Clerk at the address listed above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW, Washington, DC 20250. Telephone number (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

1. January 1999 Federal Register Notice

On January 19, 1999, FSIS published a policy statement, ''Beef Products Contaminated with *E. coli* O157:H7'' (64 FR 2803). This statement explained the Agency's policy governing beef products that contain *E. coli* O157:H7. The Agency stated that, in evaluating beef products contaminated with *E. coli* O157:H7, it would distinguish intact cuts of muscle (*e.g.,* steaks and roasts) distributed for consumption from non-intact products (*e.g.,* beef that has been mechanically tenderized by needling or cubing) and from intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption. The Agency stated that, if the latter two types of products are found to be contaminated with *E. coli* O157:H7, they must be processed into ready-to-eat product, or they would be deemed to be adulterated. FSIS explained that pathogens, including *E. coli* O157:H7, may be introduced below the surfaces of non-intact products as the result of the processes by which they are made. As a result, customary cooking of these products may not be adequate to kill the pathogens. In contrast, the meat interior of intact products remains essentially protected from pathogens migrating below the exterior surfaces. Consequently, customary cooking of these products will destroy any *E. coli* O157:H7. FSIS requested comments and recommendations relevant to the Agency's policy and to any regulatory requirements appropriate to prevent the distribution of beef products adulterated with this pathogen.

On March 8, 1999, FSIS held a public meeting to discuss the policies addressed in its January 19, 1999, policy statement. The meeting provided the public with an additional opportunity to comment and discuss the policy announced in this statement and the public health risks associated with beef products contaminated with *E. coli* O157:H7. The meeting also provided an opportunity for participants to discuss a set of questions and answers that FSIS had developed regarding the *E. coli* O157:H7 policy. At this meeting, a group of companies described a plan for testing carcasses for *E. coli* O157:H7. The group stated that they would submit their testing protocol to FSIS. In addition, individuals from Kansas State University presented preliminary findings of research on *E. coli* O157:H7 in blade tenderized beef steaks.

In its March 15, 1999, Constituent Update, FSIS explained that the Agency would not act on its January 19, 1999, policy statement until it had an opportunity to consider the comments received. On April 5, the American Meat Institute (AMI) submitted a protocol on behalf of the group of companies participating in the study on carcass testing for *E. coli* O157:H7 discussed above. The protocol called for testing 1 in 300 carcasses slaughtered by approximately 12 plants, before and after hide removal, as well as after processing interventions and at the trimmings stage, for *E. coli* O157:H7. In its May 14, 1999, Constituent Update, FSIS announced the availability of the protocol and the Agency's response to it and invited comments on these documents.

2. Draft White Paper

FSIS recently developed a draft White Paper on *Escherichia coli* O157:H7. FSIS announced the availability of this document in its November 5, 1999,

Constituent Update. The document is currently available over the Internet (URL: http://www.fsis.usda.gov/OA/update/110599__att.htm).

The White Paper discusses new information and developments that will have a bearing on the Agency's *E. coli* O157:H7 policy. The paper explains that new information indicates that *E. coli* O157:H7 is not as rare as previously thought. In September 1999, FSIS began using a method for analyzing samples of products for *E. coli* O157:H7 that is four times more sensitive than the previous method. Of the total number of positive samples found by FSIS since the testing program began in 1994, 40 percent (21 out of 53) have been found using the new test method. The recent increase in positive samples suggests that the low rate of positive findings in the past may have had more to do with the sensitivity of the method being used than with the rarity of the pathogen.

In addition to the FSIS testing data, the White Paper explains that the Centers for Disease Control and Prevention (CDC) recently released estimates of foodborne illness that show a much higher rate of illness from *E. coli* O157:H7 than the CDC had previously reported. The CDC increased its estimates for illnesses associated with *E. coli* O157:H7 because recent surveillance data allowed a more detailed estimation of mild illnesses not resulting in physician consultation (Mead, Paul S., *et al.*, ''Food-Related Illness and Death in the United States,'' *Journal of Emerging Infectious Diseases*, Vol. 5, No. 5, 1999). Although not all of these illnesses are attributable to beef, the increase in illnesses associated with *E. coli* O157:H7 indicates that this pathogen occurs more frequently than was previously thought.

The White Paper also discusses recent research and studies concerning *E. coli* O157:H7. The paper explains that the data from the industry study discussed above are being analyzed and should soon be available. This study should provide further insight into whether *E. coli* O157:H7 is a rare pathogen and whether it occurs on hides and freshly slaughtered carcasses of beef with some regularity. Under the study's protocol, 1 in 300 carcasses were tested for *E. coli* O157:H7 before hide removal, after hide removal, and after pathogen reduction interventions have been applied. The study was to run for 30 days, starting in early September. Twelve plants were involved in the study.

The White Paper also notes that the Agricultural Research Service (ARS), in Clay Center, Nebraska, is conducting research related to prevalence, and that FSIS plans to conduct some sampling to assess the feasibility of identifying *E. coli* O157:H7 on carcasses and of establishing a routine, Agency-directed sampling program to supplement or replace FSIS' ongoing ground beef testing.

The White Paper explains that FSIS' risk assessment for *E. coli* O157:H7 in ground beef will better enable both the Agency and industry to identify interventions that can lead to public health improvements and to weigh available options. The Agency hopes that the risk assessment will be completed by spring 2000. When the risk assessment on ground beef is complete, FSIS expects to expand it to cover all meat products, as well as other products that may be affected by *E. coli* O157:H7.

The White Paper also addresses data concerning blade tenderized roasts and steaks. As discussed above, during the March 8, 1999, public meeting, individuals from Kansas State University presented preliminary findings of research on *E. coli* O157:H7 in blade tenderized beef steaks. The researchers stated that the blade tenderization process transfers approximately three to four percent of surface contamination to the interior of the muscle. The researchers pointed out that proper cooking to a specified time/temperature combination resulting in rare steaks could reliably result in safe product. In addition, industry members have stated that muscle systems from which steaks are derived could be removed from larger primal or sub-primal cuts hygienically. The beef industry has been persistent in encouraging FSIS to exempt blade tenderized product, especially when derived hygienically or with reduced possibilities for becoming contaminated, from the scope of products considered adulterated when contaminated with *E. coli* O157:H7.

As of fall 1999, FSIS has tentatively determined that there is insufficient information regarding the hygienic processing of muscle systems to narrow the scope of products affected by the *E. coli* O157:H7 policy. FSIS expects its planned effort to broaden the risk assessment will address some of the issues raised by the industry. Meanwhile, FSIS has encouraged industry to label their intact and non-intact primal and sub-primal cuts with appropriate cooking statements. The 1999 Food Code (section 3–401.11) prescribes appropriate cooking instructions for intact versus non-intact steaks for destruction of organisms of public health concern.

The White Paper recognizes that interventions other than cooking may be available to address *E. coli* O157:H7 in product under FSIS control. For example, irradiation offers the possibility of treating raw meat products to eliminate *E. coli* O157:H7. The final rule on irradiation published on December 23, 1999, and will become effective on February 22, 2000. In addition to irradiation, FSIS is willing to consider whether other alternatives to cooking product within an FSIS-inspected establishment could be used to address a positive finding.

The paper notes that several other considerations are likely to be important as the Agency reviews its policy on *E. coli* O157:H7. For example, since January 25, 2000, all meat and poultry plants have been operating under the pathogen reduction and hazard analysis and critical control point (PR/HACCP) systems rule. This will likely improve food safety and may affect the Agency's *E. coli* O157:H7 policy. In reviewing this policy, FSIS will also consider the meat industry's efforts to reduce the pathogen at the production level.

Finally, the White Paper lists areas for consideration concerning FSIS' *E. coli* O157:H7 policy. FSIS has revised the questions in the White Paper to read as follows:

1. If FSIS finds that *E. coli* O157:H7 occurs with some regularity on hides and carcasses of cattle raised using certain production practices (*e.g.*, feedlot cattle) but not on cattle raised under different production practices (*e.g.*, cull dairy cows), should the pathogen be considered a hazard ''reasonably likely to occur'' only in slaughter and processing operations that use the former types of cattle? Should *E. coli* O157:H7 be addressed in the HACCP plans of those operations? Is *E. coli* O157:H7 a hazard that is reasonably likely to occur in the production of beef products? If so, what is the best HACCP-related guidance that FSIS can provide to such plants for use in their reassessment of their HACCP plans, and what actions should be taken by the Agency?

2. Should FSIS re-design its testing program? Specifically:

- Are any changes needed in the proportion of samples taken in-plant and at retail?
- Should FSIS alter its policy that 15 consecutive samples be negative after a positive finding?
- Should FSIS continue selecting a sample if a plant has a positive finding within the last 6 months, or should the Agency defer to plant routine testing completely and remove the 6-month restriction? If FSIS sampling is continued under these circumstances,

should the rules for the random selection of samples be changed?

• Should FSIS sampling of carcasses replace or supplement ground beef sampling at slaughter plants?

• Should FSIS develop additional sampling schemes, including increasing its testing of ground beef and other beef products (*e.g.*, carcasses, trimmings, and non-intact cuts)?

• What alternatives to the FSIS testing program would best encourage the regulated industry to better ensure that pathogen reduction interventions specifically for *E. coli* O157:H7 are instituted?

3. Should FSIS consider a plant's generic *E. coli* and *Salmonella* results in making its decision on whether to target a plant's products for *E. coli* O157:H7 sampling?

4. What effect should a plant's testing or verification program have on whether and how FSIS targets its testing in that plant? Should the plant's testing or verification program only be considered sufficient if included as part of HACCP validation?

5. How should FSIS treat non-intact product? Specifically, should blade-tenderized beef steaks and roasts—with specific cooking instructions for destroying the pathogen and handling instructions for preventing cross-contamination and temperature abuse—be treated the same as other non-intact beef with regard to the FSIS policy?

6. How effective are voluntary producer actions in providing animals with reduced levels of E. coli O157:H7 to plants, and should these voluntary activities, if effective, affect slaughter plants' strategies and FSIS' policy?

3. FSIS Plans

The Agency intends to consider all information that is ultimately developed from the sources of information discussed in the White Paper, as well as all information presented in response to this notice, the January 1999 notice, and the May 1999 Constituent Update, and to use that information in deciding how best to address *E. coli* O157:H7. At the February 29, 2000, public meeting, FSIS plans to discuss the issues raised in its White Paper, including the significance of the findings with its new testing method that the Agency is using to detect *E. coli* O157:H7, of the final regulations on irradiation, and of the FSIS risk assessment for *E. coli* O157:H7. ARS will present the results of a survey it performed to estimate the frequency of *E. coli* O157:H7 in feces and on hides within lots of fed cattle and the frequency of carcass contamination during processing from cattle within the same lots. The industry group will present the results of the industry study, and Kansas State University will present data concerning *E. coli* O157:H7 in blade tenderized steaks. There will be presentations on interventions available to industry and on new technology. Finally, consumer groups will present information. The public meeting also will provide an opportunity for comments and discussion regarding FSIS' *E. coli* O157:H7 policy and the course it should take, the Agency's testing and sampling methods, new issues related to the pathogen, and issues that arise during the public meeting.

The purpose of the meeting is to move forward with the January 1999 policy. The Agency has accumulated some information that suggests that a hazard resulting from *E. coli* O157:H7 in the production of beef may be more likely to occur than previously thought and that the regulated industry may not be reassessing its HACCP plans accordingly. Since all Federally inspected meat and poultry establishments are now operating under HACCP, and since a yearly reassessment of the HACCP plans (9 CFR 417.4(a)(3)) is required, FSIS hopes to use this public meeting as a means to ensure that the most current information is available to interested persons as the Agency arrives at a policy that will best protect the public health.

4. Comments Received

FSIS received a total of 81 comments in response to requests for comments in the January 19, 1999, **Federal Register** (64 FR 2803) and in the May 14, 1999, Constituent Update. FSIS received one comment in response to the March 8, 1999, public meeting notice. Comments addressed issues including the policy discussed in the January 19, 1999, policy statement, related documents, testing for *E. coli* O157:H7, and the industry's protocol. A summary of comments and the Agency's responses to these comments follow.

Consumer Support

Several consumers supported the policy and suggested that it be expanded to include *Listeria monocytogenes* and *Campylobacter jejuni*. Several consumer groups also supported the policy. Several groups argued that the policy should be expanded to include intermediate products, such as those produced from advanced meat recovery systems and other products that are added to raw ground beef. One animal welfare organization stated that even intact steaks and roasts and other cuts of muscle with surface contamination should not be distributed.

At this time, FSIS does not intend to expand its *E. coli* O157:H7 policy to cover additional products. Once FSIS' risk assessment on ground beef is completed, FSIS intends to expand the risk assessment to cover all meat products and other products that may be affected by *E. coli* O157:H7. Depending upon the results of the risk assessment for *E. coli* in these products, FSIS may consider expanding the policy to cover additional products. Also at this time, FSIS does not believe that raw product contaminated with *Listeria monocytogenes* or *Campylobacter* is adulterated within the meaning of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) or Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). *E. coli* O157:H7 is a particularly virulent pathogen. Based on epidemiological data, low numbers of *E. coli* O157:H7 may be injurious to health, especially among vulnerable consumers. FSIS is not aware of any data that suggest that customary cooking of these beef products does not reduce *Listeria monocytogenes* and *Campylobacter* to levels that are not injurious to health, even among vulnerable consumers.

Products Covered by the Policy

Numerous industry commenters did not support the policy that non-intact products contaminated with *E. coli* O157:H7 must either be processed into ready-to-eat product or deemed adulterated. Several industry commenters supported the policy with regard to beef trimmings. Several other industry commenters stated that trimmings contaminated with *E. coli* O157:H7 should not be considered adulterated. One of these commenters stated that the policy should only be applied to trimmings that will be used in raw ground products.

Numerous industry commenters also stated that FSIS has no data to support the policy that products other than ground beef that are contaminated with *E. coli* O157:H7 should be considered adulterated. Specifically, many of these commenters discussed the lack of data concerning non-intact products and the risk associated with blade tenderized steaks. One commenter from an academic institution stated that its study demonstrated that there is no difference in risk between intact and non-intact steaks cooked at temperatures resulting in rare to well-done levels of doneness.

Several industry commenters suggested that FSIS should not implement its new policy until after completion of a risk assessment or the

industry pilot program for carcass testing, or until available data show that there is a need for the policy, especially with regard to non-intact product.

In evaluating the public health risk presented by *E. coli* O157:H7-contaminated beef products, FSIS carefully considered the deliberations of the National Advisory Committee on Microbiological Criteria for Foods and its Meat and Poultry Subcommittee. As noted in the January 19, 1999, policy statement, in 1998, this Committee concluded that intact muscle should be safe if the external surfaces are exposed to temperatures sufficient to effect a cooked color change and additional heat to effect a complete sear across the cut surfaces (64 FR 2803–2804). The Committee's definition of ''Intact Beef Steak'' limited the applicability of this conclusion to muscle that has not been injected, mechanically tenderized, or reconstructed.

FSIS has tentatively determined that there is insufficient information regarding the processing of muscle systems to narrow the scope of products affected by the *E. coli* O157:H7 policy. When the risk assessment on ground beef is complete (see 63 FR 44232), FSIS expects to expand it to cover all meat products, as well as other products that may be affected by *E. coli* O157:H7. The Agency's efforts to broaden its risk assessment for *E. coli* O157:H7 may also address some of the issues raised by the industry with regard to non-intact product. Meanwhile, FSIS has encouraged industry to label their intact and non-intact primal and sub-primal cuts with appropriate cooking statements. The 1999 Food Code (section 3–401.11) prescribes appropriate cooking instructions for intact versus non-intact steaks for destruction of organisms of public health concern. The 1999 Food Code recommends these products be cooked to 145 °F for 15 seconds.

FSIS has received the results of the study referred to in the comments. The study confirmed that *E. coli* O157:H7 can be translocated to the interior of a non-intact steak. Therefore, FSIS will continue to recommend that non-intact product be cooked to 145 °F for 15 seconds, consistent with the Food Code.

Procedural Questions

Several commenters, including industry groups and a government Agency, stated that FSIS should have issued a proposed rule, and that FSIS' policy change should be subject to the requirements of the Administrative Procedures Act (APA).

The January 19, 1999, policy statement was an interpretive rule and therefore was not subject to the notice-and-comment rulemaking requirements in section 553(b) of the APA. It was intended to elucidate the policy that FSIS announced in 1994. Under section 552 of the APA, FSIS is required to publish interpretive rules in the **Federal Register**. FSIS complied with that requirement.

Effect on Industry

Several industry commenters stated that the new policy could put companies out of business and could be disproportionately burdensome on small businesses. Two industry commenters stated that the new policy could result in less voluntary testing by industry.

Experience has shown that these predictions were wrong, at least for the short-term. The policy resulted in the important carcass testing that the industry is currently conducting. FSIS' future direction in testing will be determined in large measure based on the information that FSIS has gathered since the publication of the January 19, 1999, policy statement and on the information that FSIS receives in response to this notice.

Consumer Responsibility

Several industry commenters stated that consumers should assume more responsibility for their safety and expressed the need for consumer awareness programs regarding the importance of cooking beef products thoroughly.

Industry can reduce or eliminate risk associated with *E. coli* O157:H7 through various controls and interventions, such as steam pasteurization and irradiation, that can be incorporated into HACCP systems. Because industry has the means to reduce or eliminate the hazard, consumers should not be expected to assume all the responsibility for preventing foodborne illness associated with *E. coli* O157:H7.

FSIS has informed consumers of the risk of foodborne illness from products contaminated with *E. coli* O157:H7. For example, on May 27, 1998, FSIS held a public meeting to discuss safe handling measures consumers should take in cooking hamburgers. During the meeting, participants discussed the food safety issues presented by premature browning, including the question of whether color is an appropriate indicator that ground beef is cooked to a safe internal temperature.

In addition, the Food Safety Education and Communications Staff within FSIS provides information to the public concerning numerous food safety issues, including information on cooking beef products. This office provides food safety education information through USDA's Toll-Free Meat and Poultry Hotline (1–800–535–4555), through public service announcements, printed materials, and a variety of communication channels. In addition, FSIS makes this information available over the Internet (URL: http://www.fsis.usda.gov/). Industry and consumers are invited to present information on how best to communicate the need for proper handling of non-intact products that are contaminated with *E. coli* O157:H7 at the public meeting.

Definition of Adulteration

Several commenters, including industry groups, an academic organization, and an inspection association, were opposed to the concept that beef that tests positive for *E. coli* O157:H7 be considered adulterated because the organism may be inherent in raw meat and poultry when produced under current technology.

Under the FMIA, a product is ''adulterated'' if ''it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health * * *.'' (21 U.S.C. § 601(m)(1)). Because beef products contaminated with *E. coli* O157:H7 are often cooked in a manner that may not prevent illness, this pathogen is a substance that renders ''injurious to health'' even products that many consumers consider to be properly cooked (see *Texas Food Industry Association, et. al.* v. *Espy, et. al.*, Civ. No. A–94–CA–748 JN.)

Testing for E. coli O157:H7

Several industry commenters recommended carcass sampling rather than end-product testing or combo bin sampling. In contrast, one industry organization and one consumer group opined that carcass testing would not ensure the safety of a carcass that tests positive for *E. coli* O157:H7. One consumer group specifically supported testing raw product, rather than carcasses, at both the processing and retail levels.

Several industry commenters expressed general concerns regarding testing for *E. coli* O157:H7. Several commenters noted that testing is not a means of eliminating or reducing pathogens. Other commenters noted that the likelihood of finding a pathogen

such as *E. coli* O157:H7 through testing is minimal.

Numerous industry commenters stated that FSIS should not expand its sampling and testing program. Numerous commenters that submitted the same letter stated that rather than expand the program, the Agency should refocus the program on verifying that processes are in control. Several consumer groups stated that the Agency should expand the sampling and testing program.

Effective system controls, such as through HACCP, are the appropriate means of preventing *E. coli* O157:H7 in ground beef from entering commerce. FSIS is interested in encouraging industry to conduct sampling and testing for *E. coli* O157:H7, as well as microbiological testing for appropriate non-pathogenic organisms, to allow verification and validation of HACCP systems. Microbiological sampling, as part of HACCP systems monitoring, verification, and validation, is an effective operational indicator. FSIS agrees that end-product testing alone is ineffective for ensuring process control. However, FSIS began its testing program for ground beef, an end-product testing program, as a means of spurring establishments into taking more aggressive action to control their processes. Establishments can incorporate sampling and testing for *E. coli* O157:H7 and appropriate non-pathogenic organisms into their HACCP plans to reduce risk and can ensure that they are effectively controlling the pathogen through their monitoring, verification, and validation activities. The safety of ground products will likely improve as a result of these activities at Federal establishments.

Guidance is available to industry for developing sampling and testing programs for beef. The American Meat Science Association report entitled, ''The Role of Microbiological Testing in Beef Food Safety Programs,'' published in 1999, provides guidance for microbiological testing within a HACCP system. At this time, FSIS believes that some of the assumptions concerning the prevalence and distribution of *E. coli* O157:H7 in this report may not reflect recent data; however, the guidance for sampling and testing for appropriate organisms within a HACCP system continues to be useful to industry.

FSIS considers its end-product testing as one means of preventing adulterated product from reaching consumers. Currently, FSIS is scheduling more sampling at Federal establishments than at retail stores because more product is accessible for testing.

Control at Farm

Several commenters, including industry organizations and an animal welfare organization, stated that FSIS or another entity within the Department of Agriculture should promote efforts to control the incidence of *E. coli* O157:H7 on the farm.

FSIS agrees that there should be a farm-to-table approach to reducing or preventing the risk of *E. coli* O157:H7. At the animal production level, FSIS encourages research, applied studies, and educational activities to enhance adoption of food safety practices. FSIS' Animal Production Food Safety Staff supports research to develop voluntary, science-based food safety practices and verification procedures for food animal production that will reduce the risk of microbial hazards, such as *E. coli* O157:H7, entering the food chain. This staff also provides information to the animal production community to assist them in meeting reasonable, science-based requirements for animals at the receiving stage of processing. Finally, this staff works with outside organizations to promote adoption of food production practices by producers and suppliers that result in safe and high quality animals being presented to meat and poultry slaughtering establishments.

Interventions

Several industry commenters emphasized the importance of microbial interventions, such as thermal carcass washing and irradiation, in producing safe product. Several industry commenters urged FSIS to publish its final regulations on irradiation, noting that irradiation should ensure the elimination of *E. coli* O157:H7.

FSIS agrees with commenters that interventions are integral features of any process for reducing or eliminating *E. coli* O157:H7 in beef products. However, FSIS has data that show that not all interventions are effective, and that interventions must be implemented properly to be effective. Establishments using interventions to prevent or reduce the risk of *E. coli* O157:H7 should incorporate these interventions into their HACCP plans and validate the effectiveness of the interventions.

The final rule on irradiation published on December 23, 1999, and will become effective on February 22, 2000. Therefore, this intervention will soon be available to establishments producing raw beef products.

Other Meat and Poultry Products

One industry commenter stated that this policy discriminates against beef processors, because the pork and poultry industries are similarly faced with pathogens that contribute to foodborne illnesses, but this broadened policy interpretation would not apply to them.

FSIS does not consider raw pork or poultry products to be adulterated when they are contaminated with bacteria, because these products are customarily cooked in a manner that will ensure that any pathogenic microorganisms are eliminated.

Exporting Countries

Two government organizations representing countries that export meat to the United States did not support the policy with regard to non-intact beef products. One commenter stated that any testing required of product shipped to the U.S. would cause numerous problems. The commenter explained that producers do not know whether beef cuts will be used for making non-intact product, such as reformed steaks, at the time of shipment.

The other commenter did not believe that end-product testing is the best means to ensure consumer protection against *E. coli* O157:H7 because of its low prevalence. This commenter also stated that the policy explained in the January 19, 1999, policy statement would be difficult to implement. As an alternative, the commenter recommended that any beef used to manufacture ground beef should be subject to compliance action if it is contaminated with *E. coli* O157:H7. Further, the commenter stated that appropriate compliance action should be determined based on the level of generic *E. coli* in the contaminated product.

One FSIS bargaining unit employee stated that millions of pounds of block frozen beef enter the United States daily from countries such as Australia. This commenter further stated that Australia has practically eliminated its government inspection program, and that U.S. import inspectors are allowed to sample only an insignificant amount of the product.

In response to the first comment discussed above, FSIS notes that product testing is not mandatory. With regard to the statement that exporting producers do not know whether beef cuts will be used for making non-intact product at the time of shipment, the HACCP regulations require that establishments identify the intended use or consumers of the finished product (§ 417.2(a)(2)). Countries exporting product to the United States are required to operate according to HACCP systems (§ 327.2(a)(2)(ii)(H)). Therefore,

the exporting producer should make an effort to determine whether the beef will be used to produce intact or non-intact product. If the shipping company does, and it conducts any testing and finds *E. coli* O157:H7 on the beef, that company could ensure that the beef is handled appropriately once it is shipped.

In response to the second commenter above, as discussed under *Testing for E. coli O157:H7,* FSIS agrees that end-product testing alone is ineffective for ensuring process control. However, FSIS began its testing program for ground beef, an end-product testing program, as a means of spurring establishments into taking more aggressive action to control their processes. Also, at this point, FSIS does not intend to narrow the scope of products affected by the *E. coli* O157:H7 policy. With regard to this commenter's suggestion that appropriate compliance action should be determined based on the level of generic *E. coli* in the contaminated product, data show that levels of generic *E. coli* are not necessarily indicative of the levels of *E. coli* O157:H7 in product.

In response to the comments from the FSIS bargaining unit employee, FSIS ensures that products exported to the United States are produced under inspection requirements equivalent to those in the Federal meat inspection regulations. In addition, FSIS schedules sample collection for imported ground beef product. These samples are collected and tested for *E. coli* O157:H7 according to the same procedures as are used for domestic product.

Comments on Related Documents

FSIS received comments recommending changes to FSIS Directive 10,010.1, ''Microbiological Testing Program For *Escherichia coli* O157:H7 in Raw Ground Beef.'' FSIS also received comments regarding the questions and answers it developed shortly before the March 8, 1999, public meeting.

FSIS is currently considering whether and how to revise these documents. In considering revisions to these documents, FSIS will take into account the comments submitted and information from the risk assessment on ground beef. Further, FSIS soon expects to receive the results from the industry carcass testing study and will consider modifying the directive based on its review of the results of the study.

Industry Protocol

Two consumer groups objected to FSIS' decision to delay implementation of the policy discussed in the January 19, 1999, policy statement. One of these commenters stated that FSIS should not await the results of the industry study before implementing the policy. The other expressed concerns with regard to FSIS' interest in comments to the industry protocol. For example, the commenter questioned what bearing comments from the public will have on the study. In addition, this commenter expressed doubt that the industry study would be carried out in an unbiased manner.

Another consumer group stated that data from the industry's study could offer valuable insight into both the prevalence of the pathogen and the ability of existing intervention technologies to eliminate it from beef carcasses. However, the commenter suggested that certain changes should be made to the protocol. For example, the commenter stated that FSIS' recommended changes should be incorporated into the study, and that industry should ensure that the plants involved in the study are representative of the variations that exist among plants that produce raw ground and non-intact beef products.

FSIS delayed implementation of the policy discussed in the January 19, 1999, policy statement because it was waiting for the results of the risk assessment for *E. coli* O157:H7 in ground beef and needed time to consider comments received concerning the policy, not because of the industry study. With regard to the industry study, FSIS reviewed the protocol and provided suggested changes to the industry. In addition, FSIS made the comments discussed above available to the industry through the FSIS docket room. Although FSIS reviewed and provided suggested changes to the industry, this study is an industry study; therefore, the industry was not required to revise its protocol based on comments from FSIS or from the public. FSIS has not yet received the results of the study. When reviewing the results, FSIS will take into account any short-comings in the protocol.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice of public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: February 7, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–3197 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 99–059DF]

Termination of Designation of the State of Minnesota with Respect to the Inspection of Poultry and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations by terminating the designation of the State of Minnesota under sections 1 through 4, 6 through 11, and 12 through 22 of the Poultry Products Inspection Act.

DATES: This final rule is effective February 11, 2000.

ADDRESSES: Authorizing letters from Minnesota State officials are on file in the FSIS Docket Room, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. The Docket Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service; telephone (202) 418–8900 or fax (202) 418–8834.

SUPPLEMENTARY INFORMATION:

Background

Section 5(c) of the Poultry Products Inspection Act (PPIA; 21 U.S.C. 454(c)) authorizes the Secretary of Agriculture to designate a State as one in which the provisions of sections 1–4, 6–11, and 12–22 of the PPIA will apply to operations and transactions wholly within the State after the Secretary has determined that requirements at least equal to those imposed under the Act have not been developed and effectively enforced by the State.

On January 2, 1971 and May 16, 1972, the Secretary of Agriculture designated the State of Minnesota under section 5(c) of the PPIA (21 U.S.C.) and section 301(c) (21 U.S.C. 661(c)) of the Federal Meat Inspection Act (FMIA) as a State in which the U.S. Department of Agriculture (USDA) is responsible for providing meat and poultry products inspection at eligible establishments and otherwise enforcing the applicable provisions of PPIA and FMIA with regard to intrastate activities in the State.

In addition, on January 31, 1975 (40 FR 4646), a document was published in the **Federal Register** announcing that effective on that date, USDA would assume the responsibility of administering the authorities provided under sections 202, 203, and 204 (21 U.S.C. 642, 643, and 644) of the FMIA and sections 11(b) and (c)(21 U.S.C. 460(b) and (c)) of the PPIA regarding certain categories of processors of meat and poultry products.

These designations were undertaken by USDA when it was determined that the State of Minnesota was not in a position to enforce meat and poultry inspection requirements under State laws for products in intrastate commerce that were at least ''equal to'' the requirements of the PPIA and FMIA as enforced by USDA.

In 1998, the Governor of the State of Minnesota informed FSIS that Minnesota will be in a position to administer a State meat inspection program that includes requirements at least ''equal to'' those imposed under the Federal meat inspection program for products in interstate commerce. Therefore, the designations of Minnesota under Titles I, II, and IV of FMIA were terminated, effective December 28, 1998. However, the designation of the State of Minnesota under the appropriate provisions of the PPIA has remained in effect since that time.

Section 5(c) of the PPIA provides that, whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State meat inspection requirements at least ''equal to'' those imposed by USDA under the PPIA, with regard to intrastate operations and transactions within the State, the Secretary will terminate the designation of such State. The Secretary has determined that the State of Minnesota has developed and will enforce such a State poultry products inspection program in accordance with applicable provisions of the PPIA. In addition, the Secretary has determined that the State of Minnesota also is in a position to enforce effectively the provisions of sections 1–4, 6–11, and 12–22 of the PPIA. Therefore, the designations of the State of Minnesota under these sections are terminated.

Because it does not appear that public participation in this matter would make additional relevant information available to the Secretary under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined not to be a major rule. It will not result in an annual effect on the economy of $100 million or more. It will not cause a major increase in costs or prices for consumers, individual industries, governments, or geographic regions. Terminating the designation of the State of Minnesota will provide for the State to assume the responsibility, previously limited to USDA, of administering a poultry products inspection program for intrastate operations and transactions and for ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. Qualifying businesses will have the option to operate under State inspection as an alternative to Federal inspection. The State of Minnesota will be required to administer the poultry products inspection program in a manner that is at least ''equal to'' the inspection program administered by USDA.

Effect on Small Entities

The Administrator has made an initial determination that this final rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). As stated above, the State of Minnesota is assuming a responsibility, previously limited to USDA, of administering the poultry products inspection program for intrastate poultry operations and transactions.

Additional Public Notification

FSIS has considered the potential civil rights impact of this final rule on minorities, women, and persons with disabilities. FSIS anticipates that this final rule will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, final rules generally are designed to provide information and receive public comments on issues that may lead to new or revised Agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

Accordingly, Part 381 of the poultry products inspection regulations (9 CFR Part 381) is amended as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.221 [Amended]

2. Section 381.221 is amended by removing ''Minnesota'' from the States column and by removing the corresponding date.

§ 381.224 [Amended]

3. Section 381.224 is amended by removing ''Minnesota'' from the ''State'' column in two places and by removing the corresponding dates.

Done at Washington, DC, on February 4, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–3164 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–DM–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3003–ZA00

Loan Guarantee Decision: Application Deadline

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Final rule.

SUMMARY: In order to provide additional time for filing applications, the Emergency Steel Guarantee Loan Board is reopening the application window for the submission of guarantee applications.

DATES: This rule is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In order to provide additional time for submission of completed applications, the deadline for the submission of applications has been reopened until February 28, 2000.

Administrative Law Requirements

Executive Order 12866

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

Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Loan Program—Steel, Reporting and recordkeeping requirements.

Jay E. Dittus,

Executive Director, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, the Emergency Steel Guarantee Loan Board amends 13 CFR part 400 as follows:

1. The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 400.205 is amended by revising paragraphs (a) to read as follows:

§ 400.205 Application Process

(a) Application process. An original application and three copies must be received by the Board no later than 5 P.M. EST, February 28, 2000, in the US Department of Commerce, 1401 Constitution Avenue NW., Room H–2500, Washington, DC 20230. Applications which have been provided to a delivery service on or before February 27, 2000, with ''delivery guaranteed'' before 5 P.M. on February 28, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of February 27, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

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[FR Doc. 00–3290 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–17–M

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Loan Guarantee Decision; Application Deadline

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Final rule.

SUMMARY: In order to provide additional time for filing applications, the Emergency Oil and Gas Guaranteed Loan Board is reopening the application window for the submission of guarantee applications.

DATES: This rule is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, US Department of Commerce, Washington, D.C. 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In order to provide additional time for the submission of completed applications, the deadline for the submission of applications has been reopened until February 28, 2000.

Administrative Law Requirements:

Executive Order 12866

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

Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and

an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. § 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. § 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Loan Program—Oil and Gas, Reporting and recordkeeping requirements.

Charles E. Hall,

Executive director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, the Emergency Oil and Gas Guaranteed Loan Board amends 13 CFR part 500 as follows:

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.205 is amended by revising paragraphs (a) to read as follows:

§ 500.205 Application Process

(a) *Application process.* An original application and three copies must be received by the Board no later than 5 P.M. EST, February 28, 2000, in the U.S. Department of Commerce, 1401 Constitution Avenue, NW., room H–2500, Washington, DC 20230. Applications which have been provided to a delivery service on or before February 27, 2000, with ''delivery guaranteed'' before 5 P.M. on February 28, 2000, will be acceptabled for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of February 27, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

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[FR Doc. 00–3291 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 92F–0443]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane (DBDCB) and a mixture of 5-chloro-2-methyl-4-isothiazolin-3-one (CMI) and 2-methyl-4-isothiazolin-3-one (MI), optionally containing magnesium nitrate, as antimicrobial agents in emulsion-based silicone coating formulations. This action responds to a petition filed by Dow Corning Corp.

DATES: This regulation is effective February 11, 2000. Submit written objections and requests for a hearing by March 13, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 12, 1993 (58 FR 8290), FDA announced that a petition (FAP 3B4346) had been filed by Dow Corning Corp., P.O. Box 994, Midland, MI 48686–0994. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300), § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320), and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen-containing polysiloxane and dimethylmethylhydrogen polysiloxane polymers using a platinum catalyst. It also proposed that the food additive regulations be amended to provide for the safe use of 3,5-dimethyl-1-hexyne-3-ol, 1-ethynylcyclohexene, bis(methoxymethyl)ethyl maleate and methylvinyl cyclosiloxane as optional polymerization inhibitors. Additionally, the petition proposed that the regulations be amended to provide for the safe use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture, optionally containing magnesium nitrate, as an antimicrobial agent for emulsion-based silicone coating formulations.

However, subsequent to the filing of the petition, the petitioner requested that tetramethyltetravinylcyclotetrasiloxane be included in the petition. Therefore, in a notice published in the **Federal Register** of July 2, 1998 (63 FR 36246), FDA announced that it was amending the filing notice of February 12, 1993, to indicate that the petitioner was also proposing that the food additive regulations be amended to provide for the safe use of tetramethyltetravinylcyclotetrasiloxane as an optional polymerization inhibitor in the manufacture of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen-containing polysiloxane and dimethylmethylhydrogen polysiloxane polymers using a platinum catalyst.

Also, subsequent to the filing of the petition, the petitioner requested that 1,2-dibromo-2,4-dicyanobutane be included in the petition. Therefore, in a notice published in the **Federal Register** of December 24, 1998 (63 FR 71294), FDA announced that it was amending the filing notice of July 2, 1998, to indicate that the petitioner was also proposing that the food additive regulations be amended to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as an antimicrobial agent in the manufacture of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen-containing polysiloxane and dimethylmethylhydrogen polysiloxane polymers using a platinum catalyst.

A partial response to the petition published in the **Federal Register** of December 23, 1998 (63 FR 71016). That document responded to the petitioner's request to amend the food additive regulations to provide for the safe use of dimethylpolysiloxane coatings produced by cross-linking a vinyl-containing dimethylpolysiloxane with methylhydrogen polysiloxane and dimethylmethylhydrogen polysiloxane using a platinum catalyst. In that document, FDA also amended the food additive regulations to provide for the safe use of 3,5-dimethyl-1-hexyne-3-ol, 1-ethynylcyclohexene, bis(methoxymethyl)ethyl maleate, methylvinyl cyclosiloxane, and tetramethyltetravinylcyclotetrasiloxane as optional polymerization inhibitors.

Also in the December 23, 1998, document, the agency stated that in 1996, Congress enacted the Food Quality Protection Act (the FQPA). As a result of that law, antimicrobial formulations used in or on food contact articles became subject to regulation as pesticide chemicals by the U.S. Environmental Protection Agency (EPA). Thus, the petitioned antimicrobial use of 1,2-dibromo-2,4-dicyanobutane (DBDCB) and of 5-chloro-2-methyl-4-isothiazolin-3-one (CMI) and 2-methyl-4-isothiazolin-3-one (MI) mixture, optionally containing magnesium nitrate were, at that time, subject to regulation by EPA. Subsequently, Congress passed the Antimicrobial Regulation Technical Corrections Act of 1998 (the ARTCA) (Public Law 105–324) that returned some of the regulatory authority for regulating antimicrobials in or on food contact articles to FDA. As a result of ARTCA, these petitioned antimicrobial uses are once again subject to regulation by FDA under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) and are not subject to regulation as pesticide chemicals under section 408 of the act (21 U.S.C. 346a). Although these antimicrobial uses are regulated under section 409 of the act as food additives, nevertheless, the intended uses may be subject to regulation as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, persons intending to market these food additives for such antimicrobial uses should contact the EPA to determine whether such uses require a pesticide registration under FIFRA.

In this document, the agency is responding to the petitioner's request to amend the food additive regulations to provide for the safe use of: (1) DBDCB, and (2) a mixture of CMI and MI, optionally containing magnesium nitrate, as antimicrobial agents in emulsion-based silicone coating formulations.

I. Evaluation of the Additive DBDCB

FDA has evaluated the data in the petition and other material relevant to the safety of DBDCB. The agency's conclusion on the safe use of DBDCB is contained in section III of this document.

II. Evaluation of the Mixture of CMI and MI

In its evaluation of the safety of the mixture of CMI and MI, optionally containing magnesium nitrate, FDA has reviewed the safety of each component of the mixture and the chemical impurities that may be present in the mixture resulting from its manufacturing process. Although the components themselves have not been shown to cause cancer, the mixture of CMI and MI, optionally containing magnesium nitrate, has been found to contain residual amounts of dimethylnitrosamine (DMNA), a carcinogenic impurity resulting from the manufacture of the mixture. Residual amounts of reactants and manufacturing aids, such as DMNA, are commonly found as contaminants in chemical products, including food additives.

A. Determination of Safety

Under the general safety standard of the act (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348 (c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

B. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the CMI and MI mixture, optionally containing magnesium nitrate, as an antimicrobial agent in emulsion-based silicone coatings, will result in exposure to no greater than 0.2 parts per billion of the mixture in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 600 nanograms per person per day (ng/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the mixture of CMI and MI and concludes that the estimated small dietary exposure resulting from the petitioned use of this mixture is safe.

FDA has evaluated the safety of the CMI and MI mixture under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by DMNA, the carcinogenic chemical that may be present as an impurity in the mixture. The risk evaluation of DMNA has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the mixture, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

1. Dimethylnitrosamine

FDA has estimated the exposure to DMNA from the petitioned use of the mixture of CMI and MI, optionally containing magnesium nitrate, as an antimicrobial agent in emulsion-based silicone coating formulations, to be no more than 0.1 part per quintillion in the daily diet (3 kg), or 0.3 femtograms per

person per day (fg/p/d) (Ref. 1). The agency used data from a carcinogenesis bioassay on DMNA conducted by R. Peto et al. (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the mixture. The authors reported that DMNA was carcinogenic for male and female rats under the conditions of the study, causing liver tumors in the rats.

Based on the agency's estimate that exposure to DMNA will not exceed 0.3 fg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of a mixture of CMI and MI, optionally containing magnesium nitrate, is 1×10^{-14} or 1 in 100 trillion (Refs. 1 and 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to DMNA is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to DMNA would result from the petitioned use of the mixture of CMI and MI, optionally containing magnesium nitrate.

2. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of DMNA present as an impurity in the mixture of CMI and MI. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which DMNA may be expected to remain as an impurity following production of the CMI and MI mixture, the agency would not expect this impurity to become a component of food at other than extremely low levels, and (2) the upper-bound limit of lifetime risk from exposure to this impurity from the petitioned use is very low, 1 in 100 trillion.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed uses of DBDCB, and of the mixture of CMI and MI, optionally containing magnesium nitrate, as antimicrobial agents in silicone coating formulations are safe, (2) each additive will achieve its intended technical effect, and therefore, that the regulations in §§ 175.300 and 175.320 should be amended as set forth below.

In the previous response to this petition (63 FR 71016, December 23, 1998), the agency noted that the petition proposed to amend § 176.170 to list the two antimicrobials; however, because the petitioned additives will be listed under § 175.300(b)(3), by cross-reference they may be used under § 176.170(b)(1). Therefore, this action does not include an amendment that would establish a separate listing for the additives under § 176.170(b)(1). (FDA inadvertently referred to § 176.170(b)(2) in the earlier document.)

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

IV. Environmental Impact

The agency has previously considered the environmental effects of this action as announced in the amended notices of filing for FAP 3B4346 published in the **Federal Register** of July 2, 1998 (63 FR 36246) and December 24, 1998 (63 FR 71294). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

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

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 13, 2000 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

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

1. Memorandum dated March 10, 1999, from The Division of Product Manufacture and Use, Chemistry Review Team (HFS–246), to the Division of Petition Control (HFS–215) entitled ''FAP 3B4346 (MATS 675, 2.8.1)—Dow Corning Corporation (DC). Request dated 2–10–99 from Division of Petition Control (DPC) for an exposure estimate to nitrosamine impurities in 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one.''

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis; published by S. Karger, New York, NY, pp. 24–33, 1985.

3. Peto, R. et al., ''Nitrosamine Carcinogenesis In 5120 Rodents: Chronic Administration Of Sixteen Different Concentrations Of NDEA, NDMA, NPYR And NPIP In The Water of 4440 Inbred Rats, With Parallel Studies On NDEA Alone Of The Effect Of Age Of Starting (3, 6 or 20 Weeks) And Of Species (Rats, Mice or Hamsters),'' *IARC Science Publications*, 57:627–665, 1984.

4. Memorandum, dated March 25, 1999, from the Division of Petition Control (HFS–215), to Executive Secretary, Quantitative Risk Assessment Committee (QRAC), (HFS–308), entitled ''Estimation of upper-bound lifetime risk from dimethylnitrosamine, an impurity in 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one, the subject of Food Additive Petition 3B4346 (Dow Corning Corporation).''

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

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

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii), under the heading ''Miscellaneous materials'' by alphabetically adding two entries to read as follows:

§ 175.300 Resinous and polymeric coatings

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172–55–4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2628–20–4) mixture, at a ratio of 3 parts to 1 part, respectively, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935–90–2) and optionally containing magnesium nitrate (CAS Reg. No. 10377–60–3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight). For use only as an antimicrobial agent in emulsion-based silicone coatings at a level not to exceed 50 milligrams per kilogram (based on isothiazolone active ingredient) in the coating formulations.

* * * * *

1,2-Dibromo-2,4-dicyanobutane (CAS Reg No. 35691–65–7). For use as an antimicrobial agent at levels not to exceed 500 milligrams per kilogram in emulsion-based silicone coatings.

* * * * *

3. Section 175.320 is amended in the table in paragraph (b)(3) by alphabetically adding two entries in item (iii) under the headings ''List of Substances'' and ''Limitations'' to read as follows:

§ 175.320 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *

(3) * * *

List of substances	Limitations
(iii) * * *	
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172–55–4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2628–20–4) mixture, at a ratio of 3 parts to 1 part, respectively, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935–90–2) and optionally containing magnesium nitrate (CAS Reg. No. 10377–60–3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent in emulsion-based silicone coatings at a level not to exceed 50 milligrams per kilogram (based on isothiazolone active ingredient) in the coating formulation.
1,2-Dibromo-2,4-dicyanobutane (CAS Reg. No. 35691–65–7)	For use as an antimicrobial agent at levels not to exceed 500 milligrams per kilogram in emulsion-based silicone coating.
* * * *	* * *

* * * * *

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3195 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Bayer Corp., Agriculture Division, Animal Health to Schering-Plough Animal Health Corp.

DATES: This rule is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201 has informed FDA that it has transferred ownership of, and all rights and interests in NADA 113–645 (cloprostenol sodium) to Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083. Accordingly, the agency is amending the regulations in 21 CFR 522.460 to reflect the transfer of ownership.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.460 [Amended]

4. Section 522.460 *Cloprostenol sodium* is amended in paragraphs (a)(2) and (b)(2) by removing ''000859'' and adding in its place ''000061''.

Dated: January 24, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–3194 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 93P–0277]

Medical Devices; Reclassification and Codification of Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) Laser for Peripheral Iridotomy

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to Intelligent Surgical Lasers, Inc. (ISL), (now doing business as Escalon Medical Corporation), reclassifying the Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) Laser for use in peripheral iridotomy from class III to class II (special controls). Accordingly, the order is now being codified in the Code of Federal Regulations (CFR) as described below.

DATES: This rule is effective March 13, 2000. The reclassification was effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Morris Waxler, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Devices Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the act, formerly 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDAMA added paragraph (f)(2) in section 513 to the act, which also addresses classification of postamendments devices. New paragraph (f)(2) in section 513 of the act provides that, upon receipt of a ''not substantially equivalent'' determination, a 510(k) applicant may request FDA to classify a postamendments device into class I or class II. Within 60 days from the date of such a written request, FDA must classify the device by written order. If FDA classifies the device into class I or II, the applicant has then received clearance to market the device and it can be used as a predicate device for other 510(k)'s. It is expected that this process will be used for low risk devices. This process does not apply to devices that have been classified by regulation into class III—i.e., preamendments class III devices, or class III devices for which a PMA is appropriate.

Under section 513(f)(3)(B)(i) of the act, formerly section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a classification panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

On July 27, 1993, FDA filed the reclassification petition submitted by ISL, requesting reclassification under section 513(f)(3) of the act, of the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy from class III to class II. This is a postamendments device that was automatically classified into class III.

FDA consulted with the Ophthalmic Devices Panel (the Panel). During an open public meeting on October 28, 1993, the Panel recommended that FDA reclassify the Nd:YAG laser for peripheral iridotomy from class III to class II. The Panel considered clinical studies of Nd:YAG iridotomy that report few risks to health and those that are reported have been clearly identified. The incidence rates for iridotomy closure, vision loss due to progression of laser-induced lens or corneal damage, focal corneal opacities, mild iritis, and hyphema are either lower than those for argon laser surgery or conventional surgical iridotomy, or are self-limiting and not persistent. A few rare complications (malignant glaucoma, lens-induced endophthalmitis,

monocular glaucoma, lens rupture) have been reported. The risks of damage to the corneal endothelium, the lens, and the retina are slight. The Panel believes these risks can be kept minimal by ensuring proper device design of laser beam accuracy and precision.

FDA considered the Panel's recommendations and tentatively agreed that the generic type of device, Nd:YAG laser for peripheral iridotomy, be reclassified from class III to class II. FDA recommended that the generic designation of the device be changed from Nd:YAG laser for posterior capsulotomy to ND:YAG laser for posterior capsulotomy and peripheral iridotomy.

Subsequently, in the **Federal Register** of March 8, 1996 (61 FR 9373), FDA issued the Panel's recommendation for public comment.

After reviewing the data in the petition and presented before the Panel, and after considering the Panel's recommendation, FDA, based on its and the Panel's review, issued an order to the petitioner on August 13, 1999, reclassifying the Nd:YAG laser for posterior capsulotomy, and substantially equivalent devices of this generic type, from class III to class II, with design parameters as the special controls. Additionally, FDA changed the generic designation of the device from Nd:YAG laser for posterior capsulotomy to Nd:YAG laser for posterior capsulotomy and peripheral iridotomy. FDA believes the risks mentioned above can be kept minimal by ensuring proper device design of the laser beam accuracy and precision, and through proper device labeling disclosures whereby the surgeon can control the risk of intraocular pressure rise through available, established medical treatments.

Accordingly, as required by § 860.134(b)(6) and (b)(7) of the regulations, FDA is announcing the reclassification of the generic Nd:YAG laser for posterior capsulotomy and peripheral iridotomy from class III into class II. In addition, FDA is issuing the notice to codify the reclassification of the device by revising 21 CFR 886.4392.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification 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.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Enforcement Act of 1996 (Public Law 104–121), 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not 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. Reclassification of the device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The Commissioner of Food and Drugs therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this notice will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information to the public. Therefore, no burden is placed on the public.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 886.4392 is revised to read as follows:

§ 886.4392 Nd:YAG laser for posterior capsulotomy and peripheral iridotomy.

(a) *Identification.* The Nd:YAG laser for posterior capsulotomy and peripheral iridotomy consists of a mode-locked or Q-switched solid state Nd:YAG laser intended for disruption of the posterior capsule or the iris via optical breakdown. The Nd:YAG laser generates short pulse, low energy, high power, coherent optical radiation. When the laser output is combined with focusing optics, the high irradiance at the target causes tissue disruption via optical breakdown. A visible aiming system is utilized to target the invisible Nd:YAG laser radiation on or in close proximity to the target tissue.

(b) *Classification.* Class II (special controls). Design Parameters: Device must emit a laser beam with the following parameters: wavelength = 1064 nanometers; spot size = 50 to 100 micros; pulse width = 3 to 30 nanoseconds; output energy per pulse = 0.5 to 15 millijoules (mJ); repetition rate = 1 to 10 pulses; and total energy = 20 to 120 mJ.

Dated: January 24, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–3173 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is administratively amending an

existing exemption rule for a Privacy Act system of records. The Army is providing reasons from which information maintained within this system of records may be exempt. These were administratively omitted when last published.

EFFECTIVE DATE: February 11, 2000.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060-5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390.

SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 505

Privacy.

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5, is amended by revising paragraph (e)(18) as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records. * * *

(18) *System identifier:* A0025 JDIM

(i) *System name:* HQDA Correspondence and Control/Central Files System.

(ii) *Exemptions:* Documents within this system of records are generated by other elements of the Department of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this system of records, and since the introduction of documents is largely unregulatable, specific portions or documents that may require an exemption can not be predetermined. Therefore, and to the extent that such material is received and maintained, selected individual documents may be exempt.

(A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(D) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(E) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(F) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(G) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(H) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a (k)(1) through (k)(7) from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1) through (k)(7).

(iv) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation. It could permit the subject of an investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection of apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to active case or matter. In the interest of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(2) of the Privacy Act of 1974.

(E) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

* * * * *

Dated: February 4, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 00–3071 Filed 2–10–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

36 CFR Part 327

Public Use of Water Resources Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers has amended the rules and regulations governing public use of water resources development projects administered by the Chief of Engineers. This final rulemaking supersedes the regulation dated September 3, 1985 and is designed to ensure safe, enjoyable and environmentally sound visitation on the public lands, free from unwarranted disturbances. This is accomplished by setting minimum standards of conduct for individuals using the public lands and establishing penalties that may be imposed for failure to obey the regulations.

These rules and regulations apply to water resources development projects completed or under construction, which are administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects, which are under the administrative jurisdiction of the Chief of Engineers.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Austin, Outdoor Recreation Planner, 202–761–1796.

SUPPLEMENTARY INFORMATION:

I. Comments on the Proposed Rule

Thirteen responses were received pertaining to the following six paragraphs of the regulation:

36 CFR 327.1(e) Policy. One commentator questioned the use of the word ''outgranted'', stating that it should not be used since it is not included in the Webster Collegiate Dictionary.

The word outgranted is an appropriate and legally acceptable term as defined in Army Regulation 405–80 (10 October 1997) as ''a legal document which conveys or grants the right to use Army-controlled real property''. No changes are necessary to this paragraph.

36 CFR 327.3(k) Vessels. One commentator expressed concern as to whether the Corps would still have authority to enforce boating regulations under the proposed new language.

Enforcement responsibility will remain unchanged under the revised regulation. The language is essentially the same as the previous edition (Sept. 3, 1985) and is exactly the same as paragraph 327.2h (Vehicles) which also specifies that the operation of a vehicle must be ''in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in Sec. 327.26.'' No changes are necessary to this paragraph.

36 CFR 327.7(c). Camping. One commentator questioned the elimination of the ''overnight occupancy'' requirement, stating that the new language could allow reserved sites to be unoccupied for up to 14 days without penalty.

The intent of Corps policy is to encourage the actual occupancy of all reserved campsites. Based on this comment, the phrase ''without daily occupancy'' has been inserted between the words ''campsite'' and ''for the purpose.''

One commentator also questioned the use of the word ''unauthorized'', stating that the word could be interpreted to mean that authorized placement of equipment or personal appearance (for the purposes of reserving a campsite) is acceptable.

The term ''unauthorized'' acknowledges that there may be instances where there are ''authorized'' placement of equipment at a site depending on local management policies. For example, when an entrance station is closed, many projects place a sign in the window instructing the camper to select an unoccupied site, set up camp and report back when the entrance station reopens. Eliminating the term ''unauthorized'' would cause this management practice to be in violation of 36 CFR 327. The term ''unauthorized'' will remain in this paragraph.

36 CFR 327.7(e) Camping. One commentator suggested that the words ''is posted'' be removed from the paragraph, stating that this phrase could be interpreted to mean that campsites must be physically posted by a sign, site marker, etc.

For the safety and convenience of all visitors, a method of indicating that a site has been reserved (either by physical posting or by other means) is necessary to avoid possible user conflicts. As a result of this comment, the phrase ''or otherwise marked or indicated'' has been inserted between the phrase ''is posted'' and before the phrase ''as reserved''.

36 CFR 327.20 Unauthorized Structures. Several commentators expressed concern about adding the words ''hunting stands or blinds'' to the list of items that can only be placed on project lands or waters with a prior permit or other appropriate written authorization by the District Commander.

As a result of these comments, the language has been changed to allow for the use of *portable* hunting stands or blinds without having to obtain a permit or other written approval by the District Commander. The term ''non-portable'' will be inserted between the words ''signs'' and ''hunting stands''. A second sentence will be added to state, ''Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of the day's hunt may be used''.

36 CFR 327.21(a). Special Events. Several commentators expressed concern over adding ''fishing tournaments'' to the list of special events items that are prohibited unless written permission has been granted by the District Commander. Some of these commentators requested that a size limit be set, allowing tournaments under 30 boats to be conducted without a permit. Upon further review, fishing tournaments will remain in the regulation as stated due to the size and other variations of Corps projects nationwide. However, to increase flexibility, the following sentence has been added after the first sentence of the paragraph: ''Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects''.

II. Amendments

The following amendments to 36 CFR Chapter III Part 327, as further revised based on the comments received through the Proposed Rule process, are necessary to clarify and strengthen selected regulations for more effective management and to enhance public safety and enjoyment of Corps water resource development projects. Some of the sections have been reworded and/or have had information added or deleted to clarify the regulations. These minor changes are editorial in nature and have been made to express the intent of the regulation more concisely, and to maintain consistency with existing Public Laws.

Discussion of Specific Rule Changes

In Part 327, Secs. 327.1 through 327.26, all references to ''District Engineer'' have been changed to read ''District Commander.''

36 CFR 327.0 Applicability

Section 327.0 is republished with no changes.

36 CFR 327.1 Policy

Section 327.1, paragraph (h), is revised to better define the responsibility of an operator or owner of any vehicle, vessel, or aircraft. Paragraph (i) is added to define the responsibility of a registered user of a campsite, picnic area, or other facility.

36 CFR 327.2 Vehicles

Section 327.2, paragraphs (b) and (d), is edited for consistency. A portion of a sentence has been moved from paragraph (d) into a new paragraph (h) to emphasize the laws and regulating authority for the operation of vehicles. Paragraph (e) is revised by removing the word ''project'' and paragraph (f) is revised by using the word ''designated'' to define the recreation area.

36 CFR 327.3 Vessels

Section 327.3, paragraph (a), is revised to substitute the term ''personal watercraft'' for ''jetskis'' and to add navigation on ice. A portion of a sentence has been moved from paragraph (c) into a new paragraph (k) to emphasize the laws and regulating authority for the operation of vessels. Paragraph (d) is rewritten for ease of readability and to include environmental features. Paragraph (e) has been edited for clarity and to include requirements of enforcement for non-compliance. Paragraph (h) has been modified to include a restriction about mooring vessels to project structures.

36 CFR 327.4 Aircraft

Section 327.4 is revised to include environmental features in paragraph (c), and the retrieval of person or material or equipment from project lands, and the use of balloons in paragraph (e). Paragraph (f)(3) is revised to be consistent with other sections, and to more concisely define navigation rules. Paragraph (f)(6) is revised to remove repetitiveness.

36 CFR 327.5 Swimming

Section 327.5, paragraph (a), is updated to include wading and public docks, and the last sentence is removed to eliminate repetitiveness with paragraph (c) of this section. Paragraph (b) is revised to include appropriate terminology. Paragraph (c) is revised to include the activity of swinging, and to include trees and structures which are adjacent to project waters.

36 CFR 327.6 Picnicking

Section 327.6 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.7 Camping

Section 327.7 is revised to comply with the National Recreation Reservation Service.

36 CFR 327.8 Hunting, Fishing, and Trapping

Section 327.8 is revised by breaking out each activity into separate paragraphs for better clarification.

36 CFR 327.9 Sanitation

Section 327.9, paragraph (a), is revised to include gray water. Paragraph (b) is revised to clarify the responsibility of the owner of garbage as defined in this section. Paragraph (c) is revised to include disposal of wastes for consistency with other paragraphs in this section.

36 CFR 327.10 Fires

Section 327.10, paragraph (b), is revised to include floatation materials and to clarify the regulation of open burnings for environmental considerations.

36 CFR 327.11 Control of Animals

Section 327.11, paragraph (a), is revised to include waters adjacent to developed recreation areas; to include a sentence which provides enforcement for animals which unreasonably disturb other people; to include the prohibition of animals and pets on playgrounds; and to include a sentence on the prohibition of abandoning any animal on project lands or waters. Paragraph (b) is revised to remove the words, ''in sanitary facilities''. The word ''trails'' is added to paragraph (c) for clarification on the types of recreation areas at Corps projects. Paragraph (g) is added to this section to restrict the presence of wild or exotic pets and animals, or any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance on project lands and waters unless authorized by the District Commander.

36 CFR 327.12 Restrictions

Section 327.12 is revised by adding resource protection to the list of reasons that a District Commander may close or restrict the use of a project or portion of a project. Paragraph (c) has been modified by changing the phrase ''the safety of another person'' to ''the safety of any person''. The list of audio producing devices has been removed in paragraph (d) and is now generalized to read as a ''sound producing device'' and generators have been added to the examples of motorized equipment. Paragraph (e) is added to clarify the potential prohibition of alcohol on project lands. Paragraph (f) is added to reflect requirements in E.O. 13058, August 9, 1997.

36 CFR 327.13 Explosives, Firearms, Other Weapons and Fireworks

Section 327.13 is revised by adding the words ''other weapons'' to paragraph (a). Information on explosives and fireworks is moved from paragraph (a) into a new paragraph (b) for clarification purposes.

36 CFR 327.14 Public Property

Section 327.14 is revised to include paleontological resources, and boundary monumentation or markers in paragraph (a). Paragraph (c) is revised to include clarification on site specific prohibitions. Paragraph (d) is added for clarification on metal detectors and is in conformance with existing Corps regulations.

36 CFR 327.15 Abandonment and Impoundment of Personal Property

Section 327.15, paragraph (a), is revised to include public safety or resource protection to the reasons for closure of a public use area. Paragraphs (b) and (c) are switched for better readability. Paragraph (b) is revised to include private facilities, and to include the impoundment of property for consistency with paragraph (c). Paragraph (c) is revised to increase the fair market value of property which may be disposed of after 90 days, and to correct the word ''covered'' to ''conveyed.''

36 CFR 327.16 Lost and Found Articles

Section 327.16 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.17 Advertisement

Section 327.17 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.18 Commercial Activities

Section 327.18 is revised by adding the words ''project lands or waters'', to clarify where the solicitation of business is prohibited.

36 CFR 327.19 Permits

Section 327.19, paragraph (b), is revised for consistency with current Corps of Engineers terminology. The words ''Rivers and Harbors'' are added to paragraph (c) for clarification of the

referenced Act. The words ''Water Quality'' are added to paragraph (d) for clarification on the type of required certification.

36 CFR 327.20 Unauthorized Structures

Section 327.20 is revised to include non-portable hunting stands or blinds, buoys, and docks in the list of structures for purposes of clarification. The section is also revised by changing the word ''agreement'' to ''authorization'' for consistency within the document.

36 CFR 327.21 Special Events

Section 327.21, paragraph (a), is revised to include fishing tournaments in the list of special events. The following sentence has been added to the paragraph: ''Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects''. Paragraph (b) is revised to include the restoration of an area to pre-event conditions for consistency with Corps of Engineers regulations.

36 CFR 327.22 Unauthorized Occupation

Section 327.22 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.23 Recreation Use Fees

Section 327.22 is revised by removing paragraph (b) and incorporating the information contained in this paragraph into paragraph (a) for better readability. Paragraph (c) is redesignated as paragraph (b) and a new paragraph (c) is added to include a prohibition on the failure to pay day use fees and to properly display the day use pass. A prohibition about the fraudulent use of a Golden Age or Golden Access Passports is added to paragraph (d). Paragraph (e) is removed for consistency with the National Recreation Reservation Service.

36 CFR 327.24 Interference With Government Employees

Section 327.24, paragraph (a), is revised to include the words ''attempt to kill, or kill,'' for consistency with Title 18, United States Code. Paragraph (b) is revised to include the words ''information deemed necessary for,'' to provide clarification on type of other identification which may be required by a Federal employee in the performance of issuing citations.

36 CFR 327.25 Violations of Rules and Regulations

Section 327.25 is revised to increase the amount of the maximum fine in accordance with 18 USC, section 3571, and to remove duplicate words.

36 CFR 327.26 State and Local Laws

Section 327.26 is revised to include the ''possession'' of firearms or other weapons, and ''alcohol or other controlled substances'' to the list of examples which are governed by state and local laws and ordinances. The paragraphs in this section have been renumbered for consistency and better readability.

36 CFR 327.30 and 327.31

These sections are not amended in this proposed rule.

III. Required Determinations

Executive Order 12291

This final rule is not a major rule as defined by Executive Order 12291.

Regulatory Flexibility Act Determination (5 U.S.C. 601 et seq.)

As required by the Regulatory Flexibility Act, the U.S. Army Corps of Engineers certifies that these regulatory amendments will not have a significant impact on small business entities. This rule is an update to the current regulations governing public use on Corps of Engineers Water Resources Development Projects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.)

This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more on State, local, or tribal governments or private entities.

Dated: February 3, 2000.

Approved:

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director for Civil Works.

List of Subjects in 36 CFR Part 327

Natural resources, Penalties, Public lands, Recreation and recreation areas, Resource management, Water resources.

For the reasons set forth in the preamble, amend Part 327 of Title 36 of the Code of Federal Regulations as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for Part 327 is revised to read as follows:

Authority: 16 U.S.C. 460d; 16 U.S.C. 4601–6a; Sec. 210, Pub. L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.

2. Sections 327.0 through 327.26 are revised to read as follows:

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, state and local laws and regulations remain in full force and effect where applicable to those water resources development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated in this part, the term ''District Commander'' shall include the authorized representatives of the District Commander.

(c) The term ''project'' or ''water resources development project'' refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.

(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal,

state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Commander by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the operator of any vehicle, vessel or aircraft as described in this part, shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel, or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25.

(i) For the purposes of this part 327, the registered user of a campsite, picnic area, or other facility shall be presumed to be responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such facilities as provided for in § 327.25.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, and trailers, campers, bicycles, or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Commander. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier is prohibited.

(d) Vehicles shall be operated in accordance with posted restrictions and regulations.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(f) At designated recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Commander, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(h) Vehicles shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, personal watercraft, and any other such equipment capable of navigation on water or ice, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations and restrictions, including buoys. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is on project waters.

(d) No person shall operate any vessel or other watercraft in a careless, negligent, or reckless manner so as to endanger any person, property, or environmental feature.

(e) All vessels, when on project waters, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with boating safety laws issued and enforced by the state in which the vessel is located. Owners or operators of vessels not in compliance with this section may be requested to remove the vessel immediately from project waters until such time as items of non-compliance are corrected.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any person, property or environmental feature.

(h) Vessels shall not be attached or anchored to structures such as locks, dams, buoys or other structures unless authorized by the District Commander. All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Commander. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92–75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Commander, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(k) All vessels or other watercraft shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultra-light aircraft, motorized hang gliders, hot air

balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Commander is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Commander or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(d) Nothing in this section bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means onto or from project lands or waters without written permission of the District Commander is prohibited.

(f) In addition to the provisions in paragraphs (a) through (e) of this section, seaplanes are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, in this part called seaplanes, at the risk of owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Commander (pursuant to part 328 of this title) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with U.S. Coast Guard navigation rules for powerboats or vessels and § 327.3.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Commander. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Commander, for periods less than 24 hours providing:

(i) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public, and

(ii) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Commander following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless approved by the District Commander.

§ 327.5 Swimming.

(a) Swimming, wading, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and public docks, or other areas so designated by the District Commander.

(b) An international diver down, or inland diving flag must be displayed during underwater activities.

(c) Diving, jumping or swinging from trees, bridges or other structures which cross or are adjacent to project waters is prohibited.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Commander.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Commander.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Commander.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite without daily occupancy for the purpose of reserving that campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Commander is prohibited.

(e) Occupying or placement of any camping equipment at a campsite which is posted or otherwise marked or indicated as ''reserved'' without an authorized reservation for that site is prohibited.

§ 327.8 Hunting, fishing, and trapping.

(a) Hunting is permitted except in areas and during periods where prohibited by the District Commander.

(b) Trapping is permitted except in areas and during periods where prohibited by the District Commander.

(c) Fishing is permitted except in swimming areas, on boat ramps or other areas designated by the District Commander.

(d) Additional restrictions pertaining to these activities may be established by the District Commander.

(e) All applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, gray water, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Commander. For the purposes of this section, the owner of any garbage, trash, rubbish, debris, dead animals or litter of any kind shall be presumed to be responsible for proper disposal. Such presumption will be sufficient to issue a citation for violation.

(c) The spilling, pumping, discharge or disposal of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resources development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping

equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Commander.

(b) Fires shall be confined to those areas designated by the District Commander, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic and other floatation materials or treated wood products is prohibited. The District Commander may prohibit open burning of any type for environmental considerations.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas or adjacent waters unless penned, caged, on a leash under six feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. No person shall allow animals to bark or emit other noise which unreasonably disturbs other people. Animals and pets, except properly trained animals assisting those with disabilities (such as seeing-eye dogs), are prohibited in sanitary facilities, playgrounds, swimming beaches and any other areas so designated by the District Commander. Abandonment of any animal on project lands or waters is prohibited. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas or on trails except in areas designated by the District Commander.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Commander.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Commander, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

(g) Wild or exotic pets and animals (including but not limited to cougars, lions, bears, bobcats, wolves, and snakes), or any pets or animals displaying vicious or aggressive behavior or otherwise posing a threat to public safety or deemed a public nuisance, are prohibited from project lands and waters unless authorized by the District Commander, and are subject to removal in accordance with Federal, state and local laws.

§ 327.12 Restrictions.

(a) The District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Commander may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, resource protection or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Commander. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of any person is prohibited. Individuals who are boisterous, rowdy, disorderly, or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any sound producing or motorized equipment, including but not limited to generators, vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) The possession and/or consumption of alcoholic beverages on any portion of the project land or waters, or the entire project, may be prohibited when designated and posted by the District Commander.

(f) Unless authorized by the District Commander, smoking is prohibited in Visitor Centers, enclosed park buildings and in areas posted to restrict smoking.

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:

(1) In the possession of a Federal, state or local law enforcement officer;

(2) Being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(3) Being used at authorized shooting ranges; or

(4) Written permission has been received from the District Commander.

(b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with §§ 327.15 and 327.16 except for non-identifiable items such as coins of value less than $25.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or

waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area or for the purpose of providing public safety or resource protection, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Commander, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) Personal property placed on Federal lands or waters adjacent to a private residence, facility and/or developments of any private nature for more than 24 hours without permission of the District Commander shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to impound the property and/or issue a citation as provided for in § 327.25.

(c) The District Commander shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of $100 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Commander. The net proceeds from the sale of property shall be conveyed into the Treasury of the United States as miscellaneous receipts.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Commander. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

(a) The engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited.

(b) It shall be a violation of this part to refuse to or fail to comply with any terms, clauses or conditions of any lease, license or agreements issued by the District Commander.

§ 327.19 Permits.

(a) It shall be a violation of this part to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Commander under the authority of this section. District Commanders will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Manager's office.

(c) Permits for non-floating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resources development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR parts 320 through 330.)

(d) Permits for non-floating structures (issued under the authority of § 327.30) of any kind in waters of water resources development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States, shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR parts 320 through 330). Water quality certification may be required pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).

(e) Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of § 327.30) may be issued in accordance with the project Shoreline Management Plan. Failure to comply with the permit conditions issued under § 327.30 is prohibited.

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs, non-portable hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit, lease, license or other appropriate written authorization has been issued by the District Commander. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license, or other written authorization is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Commander. Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of a day's hunt may be used.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Commander has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Commander shall have authority to revoke permission, require removal of any equipment, and require restoration of an area to pre-event condition, upon failure of the sponsor to comply with terms and conditions of the permit/

permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full-or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88–578, 78 Stat. 897, as amended (16 U.S.C. 460l–6a), is prohibited and is punishable by a fine of not more than $100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas. Fraudulent use of a Golden Age or Golden Access Passport is prohibited.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out the regulations in this part are violation of such regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to the regulations in this part shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.

§ 327.25 Violations of rules and regulations.

(a) Any person who violates the provisions of the regulations in this part, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than $5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of the regulations in this part, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.

§ 327.26 State and local laws.

(a) Except as otherwise provided in this part or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

(1) Operation and use of motor vehicles, vessels, and aircraft;

(2) Hunting, fishing and trapping;

(3) Use or possession of firearms or other weapons;

(4) Civil disobedience and criminal acts;

(5) Littering, sanitation and pollution; and

(6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

[FR Doc. 00–3185 Filed 2–10–00; 8:45 am]

BILLING CODE 3710–41–P

POSTAL SERVICE

39 CFR Part 111

Substantially Related Eligibility Requirements for Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to clarify ''substantially related'' eligibility requirements for mail matter entered by authorized nonprofit customers.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202)268–5188.

SUPPLEMENTARY INFORMATION: On May 5, 1995, the Postal Service published a final rule in the **Federal Register** (60 FR 22270–22274) implementing provisions of Public Laws 103–123 and 103–329. Those laws restrict the eligibility of certain mailings for the Nonprofit Standard Mail rates to those containing advertisements for products and services that are substantially related to the nonprofit customer's qualifying purpose.

On two occasions in the early 1990s, Congress enacted laws that place limitations on the content of advertising matter eligible for the nonprofit rates. The first of these, codified to a large extent as 39 U.S.C. 3626(j)(1)(A–C), limited solicitations for credit cards and similar financial instruments, insurance, and travel. The second, codified as 39 U.S.C. 3626(j)(1)(D), limited solicitations for all other products and services. This notice concerns the second limitation, specifically the standards regarding substantially related advertisements.

The standards implementing 39 U.S.C. 3626(j)(1)(D) are contained in Domestic Mail Manual (DMM) section E670. Section E670.5.4d provides that the Nonprofit Standard Mail rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends,

describes, or announces the availability of any product or service (other than restricted advertisements for travel arrangements, insurance, and financial instruments such as credit cards) unless the sale of the product or the providing of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates.

The statute directs the Postal Service to standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513(a) and (c) of the Internal Revenue Code to determine whether the sale of an advertised product or service is substantially related to the qualifying purposes of an organization.

Based on the past several years of experience administering the standard, and considering requests from customers seeking guidance, and after further consultation with the IRS, the Postal Service believes it appropriate to refine and clarify its policy by way of revising the standards. The goal of these revisions is to promote certainty for customers and USPS personnel in making accurate determinations of an advertisement's eligibility for the preferred rates based on IRS standards in the tax code and its implementing regulations and court precedents.

The controlling tax law provides that if the products and services sold by a nonprofit organization are substantially related to the organization's exempt purposes, the income derived from their sale is exempt from the Unrelated Business Income Tax (UBIT). See 26 U.S.C. sections 511, 512, 513(a). Accordingly, the amendment at section E670.5.4.d.1 of the DMM explains that the Postal Service will accept mailings at the Nonprofit Standard Mail rate that contain advertisements for products or services so long as the authorized nonprofit organization certifies that the income derived from the sale of the products or services is exempt from UBIT and those products or services are substantially related to the organization's qualifying nonprofit purposes. See 39 U.S.C. section 3626(j)(1)(D)(i).

The certification, which is incorporated as part of the Nonprofit Standard Mail (A) postage statement, is shown here for emphasis. There is no substantive change. However, the mailer's certification of eligibility of substantially related advertisements is specifically emphasized. The Postal Service reserves the right to pursue appropriate remedies if the certification is untrue. The revised certification reads as follows:

> The signature of a mailer certifies that: (1) the mailing does not violate DMM E670; (2) the income derived from the sale of any products or services advertised in the mailing is not subject to the Unrelated Business Income Tax (UBIT) and any products and services advertised is substantially related to the nonprofit organization's authorized purpose within the meaning of 39 U.S.C. section 3626(j)(1)(D)(ii)(I) and 26 U.S.C. section 513(a); (3) only the mailer's matter is being mailed; (4) this is not a cooperative mailing with other persons or organizations that are not authorized to mail at Nonprofit Standard Mail rates at this office; (5) this mailing has not been undertaken by the mailer on behalf of or produced for another person or organization not authorized to mail at Nonprofit Standard Mail rates at this office; (6) this mailing, if made by a voting registration official, is required or authorized by the National Voter Registration Act of 1993; and (7) it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing, whether due to a finding that the mailing is cooperative or for other reasons. (If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the nonprofit mailer, and that both the nonprofit mailer and the agent will be liable for and agree to pay any deficiencies.)

Mailers are encouraged, but not required, to begin using this certification statement immediately. The revised nonprofit postage statements will be published in the Postal Bulletin and are posted on USPS.com. Copies have been given to presort software vendors to incorporate into future software releases. Mailers will be required to use this new certification statement at some point in the future, probably when the USPS implements new rates and revises and distributes a whole new set of postage statements. These amendments to the DMM are being published without a notice and comment provision in accordance with 5 U.S.C. 553(b)(B), since no customers are burdened by the rule change. Editorial revisions have been made for clarity and references to related tax law provisions, and regulations are included for customers' convenience in consulting them.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

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

2. Revise part E670 of the Domestic Mail Manual to include additional section 5.6(f) and to read as follows:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E670 Nonprofit Standard Mail

* * * * *

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.4 Prohibitions and Restrictions

Nonprofit Standard Mail rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

* * * * *

d. Any other product or service unless one of these exceptions is met:

(1) The sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at Nonprofit Standard Mail rates. The criteria in IRS regulations at 26 CFR section 1.513–1(d), supplemented by the definitions in 5.6, are used to determine whether an advertisement, promotion, or offer for a product or service is for a substantially related product or service and, therefore, eligible for Nonprofit Standard Mail rates.

(2) The product or service is advertised in Standard Mail (A) material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the Standard Mail (A) material meets the content requirements for a periodical publication.

* * * * *

5.6 Definitions, Substantially Related Advertising Products

For the standard in 5.4d:

a. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 USC 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or

provision of an advertised product or service, whether sold or offered by the organization or by another party, is substantially related to the qualifying purposes of an organization. (Advertisements in Standard Mail (A) material that meet the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the Nonprofit Standard Mail rates. See 5.4d(2) and 5.8.)

b. To be substantially related, the sale of the product or the provision of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the Nonprofit Standard Mail rates is based. The sale of the product or providing of the service must have a causal relationship to the achievement of the exempt purposes (other than the production of income) of the authorized organization. (Income produced from selling an advertised product or providing a service does not make such action a substantially related activity, even if the income will be used to accomplish the purpose or purposes of the authorized organization.) See 26 CFR section 1.513–1(d).

(1) If an organization pays Unrelated Business Income Tax (UBIT) on the income from the sale of a product or the provision of a service, that activity is by IRS definition not substantially related. See 26 U.S.C. section 512. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related because other criteria may exempt the organization from payment. See 26 CFR section 1.513–1(e).

(2) Third-party paid advertisements may be included in material mailed at the Nonprofit Standard Mail rates if the products or services advertised are substantially related to one or more of the purposes for which the organization is authorized to mail at the Nonprofit Standard Mail rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the Nonprofit Standard Mail rates, unless it is part of material that meets the content requirements described in 5.8 and is not disqualified from using the Nonprofit Standard Mail rates under another provision.

c. Announcements of activities (*e.g.,* bake sale, car wash, charity auction, oratorical contest) are considered substantially related if substantially all the work is conducted by the members or supporters of an authorized organization without compensation. See 26 U.S.C. section 513(a)(1); 26 CFR section 1.513–1(e)(1).

d. Advertisements for products and services, including products and services offered as prizes or premiums, are considered substantially related if the products and services are received by an authorized organization as gifts or contribution. See 26 U.S.C. section 513(a)(3); 26 CFR section 1.513–1(e)(3).

e. An advertisement, promotion, offer, or subscription order form for a periodical publication meeting the eligibility criteria in E211 and published by one of the types of nonprofit organizations listed in 2.0 is mailable at the Nonprofit Standard Mail rates.

f. Unless the mailing is ineligible for the Nonprofit Standard Mail rates for other reasons, mailings will be accepted at the Nonprofit Standard Mail rates upon certification that income derived from the sale of products or services advertised in the mailing is not subject to the Unrelated Business Income Tax (UBIT) described at 26 U.S.C. section 512, and that each of the products or services is substantially related to the nonprofit organization's qualifying purpose.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–3157 Filed 2–10–00; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD–1999–5915]

RIN 2133–AB39

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is publishing this final rule to implement Title V of the Coast Guard Authorization Act of 1998. This final rule implements regulations that, under certain circumstances, will waive the U.S.-build and other requirements of the Passenger Services Act and section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This administrative process will improve the responsiveness of the Federal Government in meeting the needs of many vessel-operating small businesses.

DATES: The effective date of the final rule is February 11, 2000.

FOR FURTHER INFORMATION CONTACT: You may call Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, at (202) 366–0760, or you may write to him at the following address: Maritime Administration, MAR–832, Room 7201, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Title V of the Coast Guard Authorization Act of 1998 authorizes the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade. In order to carry out the provisions of the law, MARAD developed a procedure (i.e., this rule) for: accepting applications from the public, providing public notice of the intent to issue waivers to foreign built vessels for use in the coastwise passenger trade, a set of criteria to test the merits of the applications, a decision process, and a review and revocation process. The application process requires a $300 non-refundable fee, an ''adverse affect'' assessment on the U.S.-flag shipping and vessel building community, and a requirement that the vessel must meet U.S. Coast Guard documentation standards. After the decision process is completed and the waiver is approved, MARAD will issue a waiver document that becomes a permanent part of the vessel's coastwise endorsement. The document will set limits on the vessel's geographic use and will require MARAD's prior approval for all significant changes in the vessel's operation. With regard to overall processing, MARAD has also prepared a revocation procedure for use if necessary and a review process where the Maritime Administrator may review the waiver granting and revocation decisions of the MARAD staff.

One portion of the law requires public notice prior to rulemaking. Accordingly, on July 8, 1999 MARAD published a 60-day notice in the **Federal Register** (64

FR 36831) soliciting comments on a proposed rule and information collection to administer a program implementing the above law. In response to our notice, we received three letters expressing opinions and recommending changes. MARAD has considered these comments and has made changes to the regulation as necessary. The comments and our responses follow.

MARAD, at its own initiative, made several changes to the proposed text. None of these changes are substantive. By way of examples: definitions of ''Administrator'' and ''MARAD'' are added to reduce the length of the regulation (Sec. 388.2); the wording of the Act is followed more closely, such as ''certification'' being replaced with ''certificate of documentation with appropriate endorsement'' (Sec. 388.2 (c) (2)); corrections are made, as in making singular ''Applications; fees'' (Sec. 388.3 Title) and ''origins'' (Sec. 388.3 (a) (4)); changed the organization that the check should be made out to (Sec. 388.3 (c)); and the wording ''vessel builders'' has been used instead of ''shipbuilders'' in several places.

Comments on the Proposed Rule

''3 Mates' MIMI Connection Inc.''

The first letter, from ''3 Mates'' MIMI Connection Inc.'', was an affirmation that MARAD was serving all interests. No further action on the part of MARAD is required with regard to this input.

Classic Sailing Adventures

The second letter, from the president of Classic Sailing Adventures, contained three recommendations. In summary, the recommendations were that MARAD: (1) Should not place geographic restrictions on where a waived vessel can operate; (2) should eliminate the ''adverse assessment'' consideration on U.S.-flag industries, and, (3) should not require an application fee. MARAD's response is that because of the requirements of the law, and previously enacted legislation, we will not implement any of these recommendations. The reasons for keeping these provisions in the regulation are threefold. The geographic restriction allows MARAD to more closely focus on who might be affected by a waiver. To eliminate the ''adverse affect'' assessment on U.S. operators and shipbuilders would violate enabling legislation, which specifically requires an ''adverse affect'' determination. Lastly, the application fee is necessary to recoup estimated direct costs incurred in the processing of each application as required by law.

Passenger Vessel Association

The third letter, containing 20 specific recommendations, was received from the Passenger Vessel Association (PVA), which represents U.S.-flag passenger vessel owners, operators and builders. In order to present the recommendations and MARAD's decisions in a clear and concise manner, we have set up our response in the following format:

Each recommendation is provided a number, followed by the section where the rule has been (or might have been) changed. ''Proposed'' means the text as originally proposed in MARAD's notice of proposed rulemaking. ''Recommendation'' means the recommendation of the Passenger Vessel Association, and ''Decision'' is the action taken by MARAD. Specific word changes are underlined in the recommendation for clarity.

1. Section 388.2 Definitions

Proposed: In paragraph (2) of the definition of eligible vessel ''If rebuilt, was rebuilt outside of the United States at least 3 years before the certificate of documentation with appropriate endorsement would become effective.''

Recommendation: The PVA requests the inclusion of *''if granted''* in the sentence: ''If rebuilt, was rebuilt outside of the United States at least 3 years before the certificate of documentation with appropriate endorsement, *if granted,* would become effective.'' The words ''if granted'' ensure applicants know that waivers are not guaranteed.

Decision: MARAD accepts the requested recommendation.

2. Section 388.3 Application; Fee

Proposed: In paragraph (a) ''(a) *You* may apply in writing to the Secretary, Maritime Administration* * *''

Recommendation: Change *''You''* in paragraph (a) to read: ''(a) *An owner of a vessel* may apply in writing to the Secretary, Maritime Administration* * *''

The recommendation would insert the new words *''an owner of a vessel''* in place of the word ''*you*'' in order to ensure only vessel owners apply for waivers. The PVA could not see any other rationale for a person other than an owner applying for a waiver.

Decision: MARAD accepts the requested recommendation.

3. Section 388.3 Application; Fee

Proposed: Paragraph (a), question number (5) on the application: ''Name, address, and telephone number of the applicant and vessel owner if different from the applicant.''

Recommendation: Change paragraph (a), question number (5) on the application to read: ''Name, address, and telephone number of the *vessel owner.*''

The recommendation would delete the words *''applicant''* and *''vessel owner if different than applicant''* in order to accept applications only from owners.

Decision: MARAD accepts the recommendation.

4. Section 388.3 Application; Fee

Proposed: This requirement was not covered in the proposed rule.

Recommendation: The PVA recommends a new requirement to the waiver application that would read as a new question (8):

(8) A statement explaining the duration of the applicant's ownership of the vessel, his cost of purchasing or otherwise obtaining the vessel, the person or source from whom he obtained the vessel, and the uses to which he has put the vessel since obtaining it.

The PVA justifies this requirement as better enabling the government to determine if the waiver will have an effect on an industry.

Decision: MARAD believes this question to be intrusive and unnecessary to carry out MARAD's responsibilities and does not accept the change recommendation.

5. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (a) General criteria:

(1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an eligible vessel if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

Recommendation: It is recommended that the words *''only if''* be inserted in paragraph (a) General criteria, (1):

(1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an eligible vessel *only if* we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

The PVA would like to ensure that MARAD would interpret the two industry areas of consideration for adverse impact separately such that an adverse impact on operators *or* vessel builders would be seen to be an adverse impact subject to rejection.

Decision: MARAD agrees with this logic and will follow this interpretation. The words ''only if'' are added in the final rule.

6. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (a) General criteria, (1):

(1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not *unduly* adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

Recommendation: In paragraph (a) General criteria, (1) The PVA recommends the deletion of the word *unduly* from the phrase as this sets too high of a standard for adverse impact.

Decision: MARAD believes that to remove the word ''unduly'' would require the rejection of a waiver request for the smallest and most frivolous of adverse conditions. The recommendation is not accepted.

7. Section 388.4 Criteria for Grant of a Waiver

Proposed: This issue was not covered in the proposed rule.

Recommendation: At the end of paragraph (a) General criteria (1), the PVA requests the following statement be inserted to allow larger passenger cruise vessel operators to claim adverse affect.

The determination of unduly adverse affect on a coastwise operator or a U.S. shipbuilder should not be limited to operators or builders of vessels carrying 12 or fewer passengers.

Decision: MARAD will use the following sentence instead:

We may not limit the determination of 'unduly adverse affect' on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.

This is a reasonable recommendation, as it will allow MARAD to gauge impact on U.S.-flag vessels of all sizes. MARAD accepts the recommendation with the changed language.

8. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (a) General criteria, (2) ''We may evaluate the expected impact of the proposed waiver on the basis of information received from all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate.''

Recommendation: In paragraph (a) General criteria, (2) The PVA recommends that the word *''may''* be replaced with the word ''*will*'' in the sentence; and that the evaluation will take into account *''all*'' the information received from all sources.

We *will* evaluate the expected impact of the proposed waiver on the basis of *all* the information received * * *

Decision: MARAD accepts the premise and changes the wording from ''may'' to ''will'' and from ''and'' to ''or'' in order to maintain flexibility as to the information needed to make a decision.

We *will* evaluate the expected impact of the proposed waiver on the basis of *all* the information received from all sources, including public comment, internal investigation and analysis, *or* any other sources of information deemed appropriate.

9. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (b) Impact on U.S. vessel builders:

We *may* use the following criteria to determine the effect on U.S. vessel builders.

Recommendation: The recommended change is to delete the word *''may''* and replace it with the word ''*will*'' in the sentence:

We *will* use the following criteria to determine the effect on U.S. vessel builders.

Decision: MARAD prefers to maintain the flexibility that ''may'' provides in as much as there may need to be more than one criteria weighed in making a decision.

10. Section 388.4 Criteria for Grant of a Waiver

Proposed: In paragraph (c) Impact on coastwise trade operators:

We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and the vessel(s) of an existing operator(s) (or the vessel(s) of an operator that can demonstrate it has taken definite steps to begin operation):

(i) Are of similar size;

(ii) Are of similar characteristics;

(iii) Would provide similar commercial service; and

(iv) Would operate in the same geographic area.

Recommendation: In paragraph (c) Impact on coastwise trade operators, the PVA commented that the original phrasing was too narrow. MARAD's original phrasing would not allow a vessel owner to claim adverse effect if the U.S.-built vessel was a different size, although employed in similar commercial service as a foreign proposed vessel.

Decision: MARAD agrees with the premise of the comment and has changed the final rule to read:

We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.

This new language eliminates the previous criterion that in order to be adversely affected, the impacted vessel must be of similar size and similar characteristics.

11. Section 388.4 Criteria for Grant of a Waiver

Proposed: This issue was not covered in the proposed rule.

Recommendation: PVA proposes a new paragraph (d) as follows:

(d) Advance notice and approval needed for changes.

When we approve a waiver application, we will notify the applicant that no substantial change in the employment of the vessel in the coastwise trade may be made without prior notice to MARAD. Failure to provide advance notice of a proposed change in employment creates a presumption that the waiver should be revoked under section 388.5.

Decision: MARAD has reviewed this proposal and has added the following in the final rule:

(d) *Advance notice and approval needed for changes.*

When we approve a waiver application, we will notify the applicant that the applicant may not make substantial changes in the employment of the vessel in the coastwise trade without prior notice to MARAD. If the applicant fails to provide advance notice of substantial changes to MARAD, we may immediately revoke the waiver under section 388.5.

The change is accepted with MARAD's modifications.

12. Section 388.5 Criteria for Revocation of a Waiver

Proposed: In paragraph (a):

(a) We *may* revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

Recommendation: In paragraph (a), the PVA recommends changing the first sentence to read as follows, deleting the word ''*may*'' and replacing it with ''*will*''.

(a) We *will* revoke a waiver previously granted under this paragraph if we determine

that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement.

Decision: This recommendation is not acceptable to MARAD as ''will'' is mandatory and requires unconditional revocation. Since the change in employment of the vessel may be a positive impact on the merchant marine with no adverse impact, we do not want to have to automatically revoke a waiver.

13. Section 388.5 Criteria for Revocation of a Waiver

Proposed: In paragraph (a)(3):

(3) The employment of the vessel *unduly* adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States.''

Recommendation: In paragraph (a)(3), the change recommendation from the PVA is to remove the word ''*''unduly''*'' from the phrase ''unduly adversely affects'' as it sets too high a standard for adverse impact on industry.

Decision: MARAD believes that to remove ''unduly'' would require the revocation of a waiver request for the smallest and most frivolous of adverse conditions. MARAD does not accept the recommendation.

14. Section 388.5 Criteria for Revocation of a Waiver

Proposed: In paragraph (b):

(b) We *may* evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources * * *

Recommendation: In paragraph (b), similar to other recommendations, PVA requested that the word *''may''* be changed to *''will''* in the following context:

(b) We *will* evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources * * *

Decision: MARAD accepts the premise and changes the wording from ''may'' to ''will'' and from ''and'' to ''or'' in order to maintain flexibility as to the information needed to make a decision. We also made the change to indicate that we will evaluate * * * on the basis of *all* the information received * * *

(b) We *will* evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of all the information received from all sources, including public comment, internal investigation and analysis, *or* any other sources of information deemed appropriate.

15. Section 388.6 Process

Proposed: These issues were not covered in the proposed rule.

(a) *Recommendation:* The PVA would like additional public notice of federal actions with regard to passenger vessel waivers and recommended the following three changes:

The notice of the waiver application should be printed at least once a week for three weeks in one or more newspapers of general circulation for the geographic area in which the vessel will be operated. The notice should be published by MARAD, and be of one-quarter page newspaper size.

Decision: Because MARAD is an agency of the Federal Government, MARAD considers the **Federal Register** the appropriate public forum for the announcement of proposed waiver actions and will not require the publication of proposed waivers in local newspapers. MARAD does not accept this recommendation.

(b) *Recommendation:* Notice of federal waiver action should be distributed by e-mail to interested parties.

Decision: MARAD actions will be available publicly on the electronic docket provided by DOT. MARAD does not believe that any additional electronic notification is necessary.

(c) *Recommendation:* MARAD should maintain a proposed waiver listing on its website.

Decision: MARAD will post its notices and all comments received on the electronic docket. This activity and the notice in the **Federal Register** will meet our public notice requirements.

16. Section 388.6 Process

Proposed: In paragraph (a) Initial process:

In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will *assume* that there will be no adverse effect.

Recommendation: In paragraph (a) Initial process, the PVA objects to the word ''*assume*'' as it implies favoritism towards an application for waiver. No specific rewording was recommended.

Decision: MARAD has reviewed this section and is changing the word ''assume'' to ''conclude'' in the final rule as this is how MARAD will base its adverse impact decision. The new text will read:

In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will *conclude* that there will be no adverse effect.

17. In Section 388.6 Process

Proposed: In paragraph (a):

The decision will be communicated to the applicant, those who have submitted written comments, and the Coast Guard.

This issue was not covered in paragraph (c).

Recommendation: In paragraph (c), The PVA recommended in paragraph (c) a revision to require notification *in writing* of MARAD actions, such as in the phrase:

Each decision to grant, deny, or revoke a waiver will be *made in writing, and a copy of the written decision* will be provided to each applicant and other parties to the decision.

Decision: MARAD accepts the recommendation that decisions will be in writing and has added that language to both paragraph (a) and (c).

18. Section 388.6 Process

Proposed: In Paragraph (c): certain parties may ''. . . petition the Maritime Administrator to review a waiver, waiver denial, or waiver revocation within *five (5) days* of such determination.''

Recommendation: In paragraph (c): *Review of determinations,* PVA recommends that the time limits on petitioning should run from the date of a person's receipt of the written notice (not the date of determination). The PVA believes to do otherwise would frustrate a distant party's ability to seek a review or appeal.

Decision: MARAD understands this condition and changes to the following wording:

Applicants and persons who submitted comments in response to a **Federal Register** may petition the Administrator to review a waiver, waiver denial, or waiver revocation *within five (5) business days after MARAD files the decision in the docket.*

This revision by MARAD provides added flexibility for interested parties by making the time limit five business days instead of calendar days. Similarly, making the time limits effective based on when the decision is filed in the docket provides further flexibility. Further, all time references have been changed to business days in the final rule.

19. Under Section 338.7 Sunset Provision

Proposed: In the first sentence: ''We will grant no waivers after September 30, 2002 unless the statutory authority to grant waivers is extended beyond that date.''

Recommendation: The PVA recommends the deletion of the phrase ''unless the statutory authority to grant

waivers is extended beyond that date'' as it implies a prediction of Congressional action.

Decision: MARAD accepts the recommendation and has deleted this phrase in the final rule.

20. Section 338.7 Sunset Provision

Proposed: The second sentence reads: ''Any waiver granted prior to September 30, 2002 will continue in effect until otherwise invalidated or revoked under chapter 121 of title 46, United States Code.''

Recommendation: The PVA claims that this sentence may not have a legal basis.

Decision: MARAD has conducted a legal review of this remark and has decided to rephrase the statement as follows: ''We will grant no waivers on or after September 30, 2002.''

Therefore, with the public comments having been considered, and the appropriate changes made to the regulation a program description follows:

Program Description: Within the Department of Transportation there are two agencies with responsibilities related to the coastwise trade laws. The U.S. Coast Guard issues the vessel documents and endorsements that authorize vessels to engage in the coastwise trade. However, the Secretary of Transportation has delegated to MARAD the authority to process applications for waivers of the coastwise laws and to determine the effect of waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses. We are outlining the procedures to be followed in processing applications for waivers, or revoking waivers previously granted. Upon grant of a waiver, MARAD will notify the applicant and the U.S. Coast Guard. Thereafter, you may register the vessel so waived with the U.S. Coast Guard under the U.S. Coast Guard's normal procedures, provided the vessel is otherwise eligible.

Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign-built or foreign rebuilt small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Vessels of unknown origin will be considered foreign built. Additionally, vessels requested for consideration must be greater than three (3) years old. We will not grant waivers in instances where such waiver activity will have an unduly harmful impact on U.S. shipyards or U.S.-flag ship operators. Specifically, and in order to meet the public comment provisions of Title V, it is our intention to publish waiver requests for comment in the **Federal Register.** After a period of time to evaluate comments and assess the impact that the proposed waivers will have on the U.S.-flag shipping and shipbuilding industry, we will issue a determination.

In assessing the adverse effect of grant of a particular waiver, we may consider sales of vessels of the same type and size and for the same trade by domestic shipbuilders. As an example, the grant of a waiver for a motor vessel might not have an adverse effect on sales by a builder of sailboats. As for adverse affects on coastwise trade businesses, we may look at the type of service and geographic location of the applicant and the objector. An intended service providing day trips for whale watching might not affect a service providing weeklong trips on a sailing ship. A charter service in Maine might not affect a charter service in California. Each decision will be made on the facts of the individual circumstances, including the degree of competition in a proposed market.

We do not have the authority to waive citizenship requirements for vessel ownership and documentation. The U.S. Coast Guard will ascertain whether the shipowner is qualified as a citizen to register a vessel. In addition, the U.S. Coast Guard, not MARAD, will determine whether a particular vessel will be considered a small passenger vessel or an uninspected passenger vessel. However, we may refuse to process an application if the vessel is not the type eligible for a waiver. Prospective applicants for a coastwise trade law waiver may wish to consult with the U.S. Coast Guard prior to initiating the waiver application process with MARAD.

Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, substantially changes that service and the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel or the vessel is having an unduly harmful impact on U.S.-vessel builders or persons who employ U.S.-built vessels in the domestic trade. The procedure for revocation of a MARAD waiver will include the publication of a notice in the **Federal Register** seeking public comments on the proposed revocation. Secondly, we will determine the extent of the allegedly detrimental activity and, if an undue impact is found, we will issue a formal letter of waiver revocation with an appropriate grace period. This determination will be sent to the U.S. Coast Guard for revocation of the vessel's coastwise endorsement.

MARAD's decisions to grant or deny a waiver and to revoke or not revoke a waiver will not be final until after time for review has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Maritime Administrator to review a waiver determination, or request the Maritime Administrator not to review a waiver determination. Relatively short time periods are provided for this review process.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign re-built small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than (3) years old. We will not grant waivers in instances where such waiver activity will have an unduly adverse affect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, substantially changes that service and the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel or the vessel is having an unduly adverse affect on U.S. vessel builders or persons who employ U.S.-built vessels in the domestic trade.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 (''Federalism'') and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations

herein have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small entities. After analysis of this final rule MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small businesses. Although we expect many applicants for vessel waivers to be small businesses, we do not believe that the economic impact will be significant. This regulation allows MARAD to waive the U.S.-build and other requirements for eligible vessels and adds a small economic benefit to applicants. This regulation will only allow vessels to carry the statutory maximum of 12 passengers. As a consequence, MARAD estimates that a vessel applicant who receives a waiver may earn a few hundred dollars per year for localized operations (geographic restrictions apply) such as whale watching and personalized fishing expeditions. Also, the economic impact of this rule is limited because it precludes vessel operators from participating in other economic activities such as carrying cargo and commercial fishing.

Environmental Assessment

This rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program would have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking establishes a new requirement for the collection of information. The Office of Management and Budget (OMB) has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) Comments received on this information collection are discussed in the ''Comments on the Proposed Rule'' section of this notice of final rule. The OMB approval number is 2133–0529.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Consultation and Coordination With Indian Tribal Governments

MARAD believes that regulations in this final rule will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and record keeping requirements.

Accordingly, the Maritime Administration adds a new part 388 to 46 CFR chapter II, subchapter J, to read as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS FOR ELIGIBLE VESSELS

Sec.

Authority: 46 App. U.S.C. 1114(b); 49 U.S.C. 322; Public Law 105–383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66(cc).

§ 388.1 Purpose.

This part prescribes regulations implementing the provisions of Title V of Public Law 105–383,112 Stat. 3445, which grants the Secretary of Transportation authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than 12 passengers for hire on vessels, which are three years old or more, built or rebuilt outside the United States, and grants authority for revocation of those waivers.

§ 388.2 Definitions.

For the purposes of this part:

(a) Administrator means the Maritime Administrator.

(b) Coastwise Trade Laws include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19,1886 (46 App. U.S.C. 289); and

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Eligible Vessel means a vessel otherwise eligible for a U.S. Coast Guard certificate of documentation (i.e. of five or more tons) that is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement, if granted, would become effective.

(d) MARAD means the Maritime Administration, U.S. Department of Transportation.

(e) Secretary means the Secretary of Transportation.

(f) The terms, small passenger vessel, uninspected passenger vessel, and passenger for hire have the meaning given such terms by 46 2102 U.S.C.

§ 388.3 Application; fee.

(a) An owner of the vessel may apply in writing to the Secretary, MARAD, MAR–120, Room 7210, 400 7th St., SW., Washington, DC 20590, for an administrative waiver of the coastwise trade laws of the United States for an eligible vessel to carry no more than 12 passengers for hire. The application need not be in any particular format, but must be signed and contain the following information:

(1) Name of vessel and owner for which waiver is requested.

(2) Size, capacity and tonnage of vessel (state whether tonnage is measured pursuant to 46 U.S.C. 14502, or otherwise, and if otherwise, how measured).

(3) Intended use for vessel, including geographic region of intended operation and trade.

(4) Date and place of construction and (if applicable) rebuilding. (If applicant is unable to determine the origin of the vessel, foreign construction will be assumed).

(5) Name, address, and telephone number of vessel owner.

(6) A statement on the impact this waiver will have on other commercial passenger vessel operators, including a statement describing the operations of existing operators.

(7) A statement on the impact this waiver will have on U.S. shipyards.

(b) MARAD may ask additional questions of the applicant as part of the application review.

(c) You must enclose a non-refundable application fee for each waiver requested, in the form of a check or money order for $300, made out to the order of ''Maritime Administration—Transportation.''

§ 388.4 Criteria for grant of a waiver.

(a) General criteria. (1) We will waive the foreign build and/or foreign rebuild prohibition in the coastwise trade laws for an eligible vessel only if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

(2) We may not limit the determination of ''unduly adverse affect'' on a coastwise operator or an U.S. vessel builder to operators or builders of vessels carrying 12 or fewer passengers.

(3) We will evaluate the expected impact of the proposed waiver on the basis of all the information received from all sources, including public comment, internal investigation and analysis, or any other sources or information deemed appropriate.

(b) Impact on U.S. vessel builders. We may use the following criteria to determine the effect on U.S. vessel builders: Whether a potentially impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.

(c) Impact on coastwise trade operators. We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and a vessel of an existing operator (or the vessel of an operator that can demonstrate it has taken definite steps to begin operation) would provide similar commercial service and would operate in the same geographic area.

(2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market.

(d) Advance notice and approval needed for changes. When we approve a waiver application, we will notify the applicant that the applicant may not make substantial changes in the employment of the vessel in the coastwise trade without prior notice to MARAD. If the applicant fails to provide advance notice of substantial changes to MARAD, we may immediately revoke the waiver under § 388.5.

§ 388.5 Criteria for revocation of a waiver.

(a) We may revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

(1) The vessel is employed other than as a small passenger vessel or an uninspected passenger vessel; or

(2) The employment of the vessel unduly adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States.

(b) We will evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources, including public comment, internal investigation and analysis, or any other sources of information deemed appropriate.

§ 388.6 Process.

(a) Initial process. We will review each application for completeness as received. We will notify the applicant if additional information is necessary or if the application does not meet the initial eligibility requirements for a waiver. All applications that pass the initial screening will be available for public inspection in the Department of Transportation Docket Room following publication in the **Federal Register**. We will publish a notice of such applications in the **Federal Register**. Interested parties will be given an opportunity to comment on whether introduction of any of the proposed vessels would adversely affect them. In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will conclude that there will be no adverse effect. If an objection to an application is received, additional information may be sought from the objector. The applicant will be given a sufficient amount of time to respond. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or may, as a matter of discretion, hold a hearing on the application. The decision will be communicated in writing to the applicant, those who have submitted written comments, and the Coast Guard. If MARAD grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation, provided the vessel and its owner, otherwise qualify.

(b) Revocation. We may, upon the motion of an interested party, or upon our own motion, publish a notice in the **Federal Register**, proposing to revoke a waiver granted under this part. We may request additional information from any respondent to the notice. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and additional publicly available information or may, as a matter of discretion, refer the request for the revocation to a hearing. MARAD will communicate its decision in writing to the waiver recipient, the requestor (if any), each respondent to the proposed revocation notice; and the Coast Guard. If MARAD revokes a waiver, the Coast Guard shall revoke the vessel's coastwise endorsement.

(c) Review of determinations. (1) The decisions by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver, or revoke a waiver will not be final until after time for discretionary review by the Administrator has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Administrator to review a waiver, waiver denial, or waiver revocation within five (5) business days after MARAD files the decision in the docket. Each petition for review should state the petitioner's interest and the reasons review is being sought, clearly pointing out any alleged errors of fact or misapplied points of law. Within three (3) business days of submission of a petition for review, applicants for a waiver and persons who submitted comments in response to a **Federal Register** notice may request the Administrator not to review a waiver, waiver denial, or waiver revocation.

(2) Such petitions and responses may be sent by facsimile to the Secretary, Maritime Administration, at (202) 366–9206. To the extent possible, each petitioner or respondent should send a copy of their petition or response to other interested parties by facsimile at the same time the submission is made to MARAD. The Administrator will decide whether to take review within

two (2) business days following the time for submission of a request that the Administrator not take review. If the Administrator takes review, the determination by the Director, Office of Ports and Domestic Shipping, will be stayed until final disposition. If review is not taken, the determination by the Director, Office of Ports and Domestic Shipping, will become final two (2) business days after the time for submission of requests that the Administrator not take review. If the last day of a time limit falls on a Saturday, Sunday, or Federal holiday, the time is extended to the next business day. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping will become final within ten (10) business days. Each decision to grant, deny, or revoke a waiver will be made in writing, and a copy of the written decision will be provided to each applicant and other parties to the decision. The Secretary, MARAD, may extend any of the time limits for good cause shown.

§ 388.7 Sunset provision.

We will grant no waivers on or after September 30, 2002.

Dated: February 7, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–3176 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 99–330]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document addresses whether the discounted resale obligation of section 251(c)(4) applies to incumbent LEC provision of advanced services without regard to their classification as telephone exchange or exchange access. The Commission determines that analysis of section 251(c)(4) requires a fact-specific evaluation of the features and characteristics of a particular transaction, and concludes that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. The Commission, however, reaches a different result as to advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering, concluding that these advanced services are inherently different from advanced services made available directly to business and residential end-users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).

DATES: Effective March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Staci Pies, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (Second R&O), in CC Docket No. 98–147, adopted November 2, 1999, and released November 9, 1999. This Second Report and Order addresses the issue raised in the Notice of Proposed Rulemaking in this docket (*Advanced Services Order and NPRM*), 63 FR 45246, August 25, 1998. On December 22, 1999, the Commission released an Errata correcting various ministerial errors in the Second R&O. The complete text of the Second R&O and the Errata is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS Inc.), CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Second Report and Order

I. Introduction

1. The Second R&O concludes, based on an examination of the statutory language, the Act's purpose, and the specific facts, that advanced services sold to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. Moreover, the Second R&O concludes that advanced services sold to Internet Service Providers under volume and term discount plans are inherently and substantially different from advanced services made available directly to business and residential end-users, and as such, are not retail services and are not subject to the discounted resale obligations of section 251(c)(4).

II. Discussion

2. The Second R&O finds that advanced services are telecommunications services that predominantly are offered to residential and business end-users and to Internet Service Providers—all subscribers that are not telecommunications carriers. Moreover, advanced services made available directly to business and residential end-users are provided ''at retail.''

3. The Second R&O finds that although Congress used the term ''at retail'' to identify the types of transactions that are subject to a wholesale discount, it is not clear how the Commission should interpret the term. The Act does not define the term ''at retail,'' and the legislative history on section 251(c)(4) provides only minimal clarification of Congress' intentions with regard to the appropriate definition and application of the term. Although the legislative history suggests that the Commission should interpret section 251(c)(4) in such a way so as to create affordable resale opportunities in order to stimulate the development of local competition, while still allowing incumbents to recover their costs for providing these services, there is no indication in the legislative history that Congress considered how ''at retail'' should be construed in the context of the sale of data services to Internet Service Providers as an input component to their information service offerings to the ultimate end-user.

4. Webster's Unabridged Dictionary defines the term ''retail'' as ''the sale of commodities, goods, articles, etc. individually or in small quantities or parcels directly to the consumer.'' Similarly, Black's Law Dictionary defines retail as ''[a] sale for final consumption in contrast to a sale for further sale or processing (*i.e.,* wholesale) * * * to the ultimate consumer.'' Based on these definitions, the Second R&O finds that retail transactions necessarily involve direct sales of a product or service to the ultimate consumer for her own personal use or consumption.

5. The Second R&O concludes that an Internet Service Provider is purchasing the DSL service for the sole purpose of combining the telecommunications service with its own information service and offering a new retail service, *i.e.,* high-speed Internet service, to the ultimate end-user. In this process, the Internet Service Provider adds value to the bulk DSL telecommunications service by dividing that service for individual consumer use and adding the Internet service, thus enabling the

Internet Service Provider to offer and sell the newly created information service to the ultimate consumer: the residential or business subscriber. For these reasons, the Internet Service Provider is not the ultimate end-user.

6. Further, the DSL services that incumbents are offering to Internet Service Providers specifically contemplate that the Internet Service Provider will be the entity providing to the ultimate end-user many services typically associated with retail sales, thus reinforcing the conclusions of the Second R&O that the bulk DSL services are not retail services offered to the ultimate end-users. Any Internet Service Provider that purchases a bulk DSL service must itself, rather than the incumbent, provide these typical retail services to the ultimate consumer. These facts underscore that bulk DSL services sold to Internet Service Providers are markedly different from the retail DSL services designed for individual end-user consumption.

7. In contrast, the Second R&O finds that some incumbent LECs are selling single lines of DSL service directly to residential and business end-users. These customers buy the DSL service to meet their own internal telecommunications needs. The Second R&O concludes that an incumbent LEC DSL offering to residential and business end-users is clearly a retail offering designed for and sold to the ultimate end-user. Accordingly, the Second R&O finds that DSL services designed for and sold to residential and business end-users are subject to the discounted resale obligations of section 251(c)(4). The Second R&O concludes, however, that section 251(c)(4) does not apply where the incumbent LEC offers DSL services as an input component to Internet Service Providers who combine the DSL service with their own Internet service.

8. The Second R&O notes that the conclusions therein do not change the regulatory status of the Internet Service Provider, which the Commission previously has concluded to be an information service provider rather than a telecommunications carrier.

9. The Second R&O finds that its conclusions are consistent with the Commission's decision regarding the scope of section 251(c)(4) as set forth in the *Local Competition First Report and Order,* 61 FR 45476, August 29, 1996, where the Commission resolved that the type of exchange access services predominantly offered to interexchange carriers are not subject to the discounted resale obligations of section 251(c)(4). Nonetheless, the Second R&O clarifies that advanced telecommunication services sold directly to residential and business end-users are not exempt from these obligations, even though such services may be classified as exchange access services.

III. Final Regulatory Flexibility Analysis (FRFA)

1. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. section 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Advanced Services Order and NPRM.* The Commission sought written public comment on the proposals in the *Advanced Services Order and NPRM,* including comment on the IRFA. This present FRFA conforms to the RFA.

A. Need for and Objectives of This Second Report and Order and the Rules Adopted Herein

2. In order to encourage competition among carriers to develop and deploy new advanced services, it is critical that the marketplace for these services be conducive to investment, innovation, and meeting the needs of consumers. In this Second Report and Order, we seek to ensure that all carriers have economic incentives to innovate and invest in new technologies.

3. We amend our rules to clarify that advanced services sold to Internet Service Providers as an input component to the Internet Service Providers' own retail Internet service offering are not subject to the discounted resale obligations of section 251(c)(4). We also amend our rules to clarify that, notwithstanding the fact that advanced services sold to Internet Service Providers are excluded from the residential resale obligations of section 251(c)(4), advanced telecommunication services sold directly to residential and business end-users are not exempt from these obligations, even though such services may be classified as exchange access services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In the IRFA, we stated that any rule changes would impose minimum burdens on small entities. We indicated that the IRFA solicited comment on alternatives to our proposed rules that would minimize the impact they may have on small entities. The comments we received did not respond directly to the issue addressed in this Order.

C. Description and Estimates of the Number of Small Entities Affected by the Second Report and Order

5. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

6. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,604 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

7. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

8. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules of the present action.

9. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules of the present action.

10. *Local Exchange Carriers, Resellers and Internet Service Providers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), competitive local exchange carriers (CLECs), resellers, or Internet Service Providers (ISPs). The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, there are 1,410 LECs, 129 CLECs, and 351 resellers.

11. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 129 CLECs, and 351 resellers that may be affected by the decisions and rules of the present action.

12. *Internet Service Providers.* SBA has developed a small business size standard for ''Information Retrieval Services,'' SIC code 7375. This category includes establishments primarily engaged in providing online database information retrieval services, on a contract or fee basis. According to SBA regulations, a small business under this category is one having annual receipts of $18 million or less. Based on firm size data provided by the Bureau of the Census, 3,123 firms are small under SBA's $18 million size standard for SIC code 7375. Although some of these ISPs might not be independently owned and operated, we are unable at this time to estimate with greater precision the number of ISPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 3,123 or fewer small entity ISPs that may be affected by the decisions and rules of the present action.

D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. We require incumbent LECs to make available at a wholesale discount advanced services sold at retail to residential and business end-users, without regard to their classification as telephone exchange service or exchange access service. We determine that complying with these rules may require use of operational, accounting, billing, and legal skills. We believe, however, that incumbent LECs will already have these skills.

14. The burden of compliance with this requirement is minimal because, pursuant to section 251(c), incumbent LECs already must comply with state mandated wholesale discount requirements for all telecommunications services they provide at retail to subscribers who are not telecommunications carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

15. Section 251(c)(4) imposes on all incumbent LECs, including small incumbent LECs, the duty to offer for resale at wholesale rates ''any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.'' The Commission's conclusions in this order clarify this statutory obligation. The order imposes no additional obligations on incumbent LECs.

F. Report to Congress

16. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Procedural Matters

17. Accordingly, *It is ordered that,* pursuant to sections 1 through 4, 10, 201, 202, 251 through 254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 251–254, 256, 271, and 303(r), the Second Report and Order is hereby *Adopted.* The requirements adopted in this Second Report and Order shall be effective March 13, 2000.

18. The actions contained in this Second Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

List of Subjects in 47 CFR Part 51

Communications, Common carriers, Telecommunications

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 51 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

1. The authority for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. Section 51.605 is amended by revising paragraph (b), and adding paragraphs (c), (d) and (e) to read as follows:

§ 51.605 Additional obligations of incumbent local exchange carriers.

* * * * *

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(c) For purposes of this subpart, advanced telecommunications services sold to Internet Service Providers as an input component to the Internet Service Providers' retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(d) Notwithstanding paragraph (b) of this section, advanced telecommunications services that are classified as exchange access services are subject to the obligations of paragraph (a) of this section if such services are sold on a retail basis to residential and business end-users that are not telecommunications carriers.

(e) Except as provided in § 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

2. Section 51.607 is revised to read as follows:

§ 51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

[FR Doc. 00–3196 Filed 2–10–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CFR 48 Parts 1825 and 1852

Standard Clause for Export Controlled Technology

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to add a contract clause the purpose of which is to assure contractors (and offerors) understand that they are responsible for export compliance in accordance with law and regulation, and that they should not rely on NASA to obtain necessary licenses in execution of the contracted work. This clause complies with performance based contacting principles. It notifies the contractor of its responsibilities under the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) during contract performance. Additional, tailored clauses may be required when specific exemptions or licenses are applicable, as, for example, with the International Space Station. These clauses would be developed on a case-by-case basis.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0460.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on October 28, 1999 (64 FR 58031–58032). No comments were received. This final rule adopts the proposed rule without change.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 1825 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1825 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1825 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1825—FOREIGN ACQUISITION

2. Sections 1825.970, 1825.970–1, and 1825.970–2 are added to read as follows:

1825.970 Export control.

1825.970–1 Background.

(a) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or ''foreign person'', as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a ''foreign person''. (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii).)

(b) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its

use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

1825.970–2 Contract clause.

Insert the clause at 1852.225–70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.225–70 is added to read as follows:

1852.225–70 Export Licenses.

As prescribed in 1825.970–2, insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

ALTERNATE 1 (FEB 2000)

As prescribed in 1825.970–2, add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[FR Doc. 00–3009 Filed 2–10–00; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

RIN 1018–AD95

Additional Comments Sought on Permit Regulations Relating to Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for additional comment on final rule amending general permitting regulations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) published a final rule on June 17, 1999, amending parts 13 and 17 of title 50 of the Code of Federal Regulations (CFR). The final rule, among other things, contained a number of changes to existing Service regulations that apply to permits issued under the authority of the Endangered Species Act of 1973, as amended (Act). The changes were designed to alter the applicability of the Service's general permitting regulations in 50 CFR part 13 to permits issued under section 10 of the Act for Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances. We are seeking additional public comment on a number of the regulatory changes finalized in the June 17, 1999, rule. During the period in which additional public comments are solicited, the regulations published in the final rule of June 17, 1999, will remain in full force and effect. Based on public comments received, we will decide whether portions of the June 17, 1999 final rule should be reproposed. Aspects of the June 17, 1999 final rule that are not included in this document are unaffected.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Send any comments or materials concerning this document to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C., 20240 (Telephone 703/358–2171, Facsimile 703/358–1735). You may examine comments and materials received during normal business hours in room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species (Telephone 703/358–2171, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION: This notice of request for additional comment on the final rule, including the background information for the rule, that amended the general permitting regulations applies to the U.S. Fish and Wildlife Service only. Therefore, the use of the terms Service and ''we'' in this notice refers exclusively to the U.S. Fish and Wildlife Service. The final rule was published on June 17, 1999, at 64 FR 32706. We published a correction document September 30, 1999, at 64 FR 52676 to correct certain errors that appeared in the final regulations.

Background

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, we published 50 CFR part 13 to consolidate the administration of various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. We intended the general part 13 permitting provisions to be in addition to, and not in lieu of, other more specific permitting requirements of Federal wildlife laws.

Subsequent to the 1974 publication of part 13, we added many wildlife regulatory programs to title 50 of the CFR. For example, we added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the Endangered Species Act, and added part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

In most instances, the combination of part 13's general permitting provisions and part 17's specific permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the ''one size fits all'' approach of part 13 has been inappropriately

constraining and narrow. These three areas involve Habitat Conservation Planning, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Congress amended section 10(a)(1) of the Act in 1982 to authorize incidental take permits associated with Habitat Conservation Plans (HCP). Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit or longer. We negotiate such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this system as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this arrangement as a problem so long as we can easily transfer incidental take authorization from one purchaser to another.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its citizens. We do not view this activity as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

The above HCP scenarios have not been easily reconcilable with certain sections of part 13. For example, 50 CFR sections 13.24 and 13.25 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they have imposed inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP have foreseen the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could have arisen in attempting to apply the general part 13 permitting requirements to permits issued under part 17 to implement Safe Harbor or Candidate Conservation Agreements with Assurances. A major incentive for property owner participation in the Safe Harbor or Candidate Conservation Agreements with Assurances programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land if it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could have viewed the limitations in several sections (*e.g.,* sections 13.24 and 13.25) as impediments to the development of these Agreements.

Because we believed that it was appropriate to address the potential conflicts between parts 13 and 17 of the regulations, we promulgated revisions to the regulations that specifically identify in which instances the permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits will differ from the general part 13 permit procedures.

Description/Overview of the Notice Requesting Additional Comments

This notice seeks additional public comment on the specific amendments to parts 13 and 17, promulgated in the June 17, 1999, final rule, that dictate when the permitting requirements for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits will vary from the general part 13 requirements. We believe specific regulatory amendments will achieve the purpose of avoiding potential conflicts between these permits and the general part 13 requirements, while more clearly informing potential applicants and the interested public of the ways in which the requirements for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits differ from the general permit requirements. The specific changes on which we seek additional public comment are as follows:

1. Section 13.21(b)(4) generally prevents the Service from issuing a permit for an activity that ''potentially threatens a wildlife or plant population.'' This provision is unnecessary and might even be confusing for issuance criteria for permits under HCPs, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances, since the HCP and Candidate Conservation Agreements with Assurances issuance criteria already incorporate a requirement that the permitted activity cannot be likely to jeopardize the continued existence of a species and since Safe Harbor Agreement permits must meet a net benefit test. The final rule therefore revised the HCP permit issuance criteria in sections 17.22(b)(2) and 17.32(b)(2) to except HCP permits from section 13.21(b)(4) and included in the final Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permit regulations a similar exception from section 13.21(b)(4) (sections 17.22(c)(2) and (d)(2) and 17.32(c)(2) and (d)(2)).

2. Section 13.23(b) generally reserves to the Service the right to amend permits ''for just cause at any time.'' The final rule revised this provision to clarify that the Service's reserved right to amend HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits must be exercised consistently with the assurances provided to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit holders in their permits and in the HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit regulations.

3. The final rule revised section 13.24 to provide a more streamlined approach to rights of succession for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits, and revised section 13.25 to provide for greater transferability of these permits. The restrictions that sections 13.24 and 13.25 previously imposed on permit succession and transferability were justified for most wildlife permitting situations, but they were inappropriate and unnecessary for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. These permits may involve substantial long-term conservation commitments, and the Service negotiates such long-term permits recognizing that there may be succession or transfer in ownership during the term of the permit. Revised sections 13.24 and 13.25 allow this transfer as long as the successor or transferor owners meet the general qualifications for holding the permit and agree to the terms of the HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances. Under revised section 13.25(d), any person is under the direct control of a State or local governmental entity that has been issued a permit and may carry out the activity authorized by the permit if (1) that person is under the jurisdiction of the governmental entity and the permit provides that the person may carry out the authorized activity, or (2) the person has been issued a permit by the governmental entity or executed a written instrument with the governmental entity pursuant to the terms of an implementing agreement.

4. The final rule added a new subparagraph (7) to sections 17.22(b) and 17.32(b) to make clear that HCP permittees remain responsible for mitigation required under the terms of their permits even after surrendering their permits. We have required this approach in many HCPs. The general provision in section 13.26 was silent on

this issue and could have been interpreted as not requiring any further actions after surrender of an incidental take permit, even if mitigation were owed under the terms of the permit for take that had already occurred.

5. The final rule modified the permit revocation criteria in section 13.28(a) to provide that the section 13.28(a)(5) criterion shall not apply to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. The Service determined that it would be more appropriate to refer instead to the statutory issuance criterion in 16 U.S.C. 1539(a)(2)(B)(iv) that prohibits the issuance of an incidental take permit unless the Service finds the permit is not likely to jeopardize the continued existence of the species. The final rule therefore included in the specific regulations for HCP permits a provision (sections 17.22(b)(8) and 17.32(b)(8)) that allows a permit to be revoked if continuing the permitted activity would be inconsistent with 16 U.S.C. 1539(a)(2)(B)(iv). The final rule also included similar provisions for the Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits (sections 17.22(c)(7) and (d)(7), and sections 17.32(c)(7) and (d)(7)).

In keeping with the ''No Surprises'' rule (sections 17.22(b)(5)–(6) and 17.32(b)(5)–(6)), these provisions would allow the Service to revoke an HCP permit as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit and the Service has not been successful in remedying the situation through other means. The Service is firmly committed, as required by the No Surprises rule, to utilizing its resources to address any such unforeseen circumstances. These principles also apply to Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits.

6. The final rule revised section 13.50 to allow more flexibility where the permittee is a State or local governmental entity and has thus taken a leadership role and is assisting in implementation of the permit program.

7. The final rule added a new subparagraph (5) to sections 17.22(c) and (d) and 17.32(c) and (d) to provide the same ''No Surprises'' assurances for Safe Harbor Agreement and Candidate Conservation Agreement with Assurance permits that already apply to HCPs.

To ensure that we have promulgated the most effective regulations possible, we seek additional comment on the above described amendments of June 17, 1999, to Title 50, Chapter I, subchapter B of the CFR, as set forth below for the convenience of the reader. The amendments contain the corrected language included in the September 30, 1999 correction document. Bear in mind that these changes are currently in effect, and no new revision to the CFR will result from this document.

§ 13.23 Amendment of permits.

* * * * *

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter shall be consistent with the requirements of §§ 17.22(b)(5), (c)(5), and (d)(5) or 17.32(b)(5), (c)(5), and (d)(5) of this subchapter, respectively.

* * * * *

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or

(2) A receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

(d) In the case of permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter to a State or local governmental entity, a person is under the direct control of the permittee where:

(1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or

(2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

§ 13.50 Acceptance of liability.

Except as otherwise limited in the case of permits described in § 13.25 (d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

§ 17.22 Permits for scientific purposes, enhancements of propagation or survival, or for incidental taking.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an

implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5)(ii) of this section apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in § 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

* * * * *

§ 17.32 Permits—general.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the

general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), * * * * * * * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * * * * * * * * *

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in §§ 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in §§ 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * * * * * * * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures

would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: February 1, 2000.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife, and Parks, Department of the Interior.

[FR Doc. 00–2870 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331–0017–02; I.D. 102899B]

RIN 0648–AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the American Fisheries Act (AFA); Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS published in the **Federal Register** of February 3, 2000, a document implementing an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands (BS/AI) directed fishing allowance under section 206(b)(1) of the AFA. The fee system provides the means of repaying a $75 million loan to reduce fishing capacity in that fishery. Fees are first due and payable under the inshore fee system on February 10, 2000. Although the fee system provisions were established in a separate subpart G of part 679, the section numbering was duplicated inadvertently in another recently published BS/AI rule. The intent of this rule is to correct that error by renumbering the sections of Subpart G as §§ 679.70–679.76.

DATES: Effective February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION: NMFS published a document in the **Federal Register** of February 3, 2000, (65 FR 5278)establishing a new subpart G consisting of §§ 679.60–679.66 to implement an inshore fee system for all pollock harvested under the IC of the BS/AI directed fishing allowance. Less than a week earlier, NMFS had published a document in the **Federal Register** of January 28, 2000, (65 FR 4520) establishing a new subpart F consisting of §§ 679.59–679.64 to implement major provisions of the AFA including sideboard directed fishing closures. Thus, §§ 679.60–679.64 of the rule published on January 28, 2000, would be replaced by the unrelated rule published on February 3, 2000. This correction renumbers the new subpart G as §§ 679.70–679.76. In addition, the reference to the definitions section of part 679 is corrected from § 679.01 to § 679.02.

In rule FR Doc. 00–2284, published on Thursday, February 3, 2000 (65 FR 5278) make the following corrections:

1. On page 5279, in the third column, fourth complete paragraph, second line, correct ''§ 679.64'' to read ''§ 679.74''.

2. On page 5279, in the third column, sixth complete paragraph, second line, correct ''§ 679.63'' to read ''§ 679.73''.

3. On page 5279, in the third column, eighth complete paragraph, third line, correct ''§ 679.60'' to read ''§ 679.70''.

4. On page 5280, in the first column, fourth complete paragraph, fourth line, correct ''§ 679.64'' to read ''§ 679.74''.

5. On page 5280, in the first column, eighth complete paragraph, first line, correct ''§ 679.60'' to read ''§ 679.70''.

6. On page 5280, in the first column, ninth complete paragraph, first line, correct ''§ 679.61'' to read ''§ 679.71''.

7. On page 5280, in the first column, tenth complete paragraph, first line, correct ''§ 679.63'' to read ''§ 679.73''.

8. On page 5280, in the first column, eleventh complete paragraph, first line, correct ''§ 679.64'' to read ''§ 679.74''.

9. On page 5281, in the first column, correct the section numbers in the table of contents for subpart G from §§ 679.60–679.66 to §§ 679.70–679.76.

10. Sections 679.60 through 679.66 appearing on pages 5281 through 5283 are correctly designated as §§ 679.70 through 679.76.

11. On page 5281, in the first column, in corrected §679.70, second line, correct ''§ 679.1'' to read ''§ 679.2''.

12. On page 5282, in the second column, in corrected §679.73(c), last line, correct ''§ 679.62(b)(1)'' to read ''§ 679.72(b)(1)''.

Dated: February 8, 2000.

Don Knowles,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–3214 Filed 2–9–00; 9:10 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 29
Friday, February 11, 2000

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

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB53

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to provide that applicants may seek financial assistance to provide mobile telecommunications service without regard to whether the applicant is providing basic local exchange service in the territory to be served. RUS is also clarifying its regulations with regard to the application of nonduplication provisions and state telecommunications modernization plans to mobile telecommunications services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service. This proposed rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: Written comments on this proposed rule must be received by RUS or carry a postmark or equivalent by March 13, 2000.

ADDRESSES: Written comments on this proposed rule should be addressed to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700.4). All comments received will be available for public inspection in room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This proposed rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal Mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule

is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Public Law 104–104) and regulatory actions by the Federal Communications Commission are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

RUS regulations currently stipulate that an entity must provide or propose to provide the basic local exchange telephone service needs of rural areas to be eligible for RUS financing (7 CFR 1735.14, Borrower Eligibility) and that loans cannot be made for facilities to serve subscribers outside the borrower's local exchange service area (7 CFR 1735.17, Facilities Financed). The Telecommunications Act of 1996, however, made the term ''basic local exchange service'' obsolete. The law mandates that universally available and affordable telecommunications services, including access to advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telephone services to rural areas is to make certain providers of services, in addition to providers of local exchange services, eligible for RUS financing. Mobile telecommunications services are included among the telephone services financeable under the Rural Electrification Act (RE Act) and contemplated in the Telecommunication Act of 1996. Mobile telecommunications service is fundamentally different from wireline service and RUS believes that, in addition to wireline service, mobile telecommunications services should be made available in all rural areas. Therefore, RUS is deleting its requirement that all borrowers provide local exchange service. Since mobile telecommunications services do not and cannot serve the same function as contemplated in state telecommunications modernization plans (TMPs) for wireline services (see 7 CFR 1751.106), RUS policy is to consider a borrower receiving a loan to finance such services to be participating in the state's plan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals set forth in the plan. RUS will continue to follow this policy regardless of whether the borrower provides any local exchange services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service.

RUS regulations are also utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's (the Bank) loan program; therefore, these policy revisions would apply to loans made by the Bank, as well.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, the following definitions are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Mobile telecommunications service means the transmission of a radio communication voice service between mobile and land or fixed stations, or between mobile stations.

* * * * *

Public switched network means any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile telecommunications service providers, that use the North American Numbering Plan in connection with the provision of switched services.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

* * * * *

3. Amend § 1735.10 by:

A. Revising paragraph (b);

B. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

C. Add a new paragraph (c).

The revision and addition read as follows:

§ 1735.10 General.

* * * * *

(b) RUS will not make hardship loans, RUS cost-of-money loans, or RTB loans for any wireline local exchange service or similar fixed-station voice service that, in RUS' opinion, is inconsistent with the borrower achieving the requirements stated in the State's telecommunication modernization plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless RUS has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

(c) A borrower applying for a loan to finance mobile telecommunication services shall be considered to be a participant in the State's telecommunication modernization plan so long as the loan funds are not used in a manner that, in the opinion of the Administrator, is inconsistent with the borrower achieving the goals set forth in the plan.

* * * * *

4. Amend § 1735.12 by:

A. Revising paragraph (c) introductory text; and

B. Adding new paragraphs (d) and (e).

The revision and addition read as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service in determining whether such service is reasonably adequate:

* * * * *

(d) RUS shall consider the following criteria for any of mobile telecommunications service in determining whether such service is reasonably adequate:

(1) The extent to which area coverage is being provided as described in 7 CFR 1735.11.

(2) Clear and reliable call transmission is provided with sufficient channel availability.

(3) The mobile telecommunications service signal strength is at least—85dBm (decibels expressed in miliwatts).

(4) The mobile telecommunications service is interconnected with the public switched network.

(5) Mobile 911 service is available to all subscribers, when requested by the

local government entity responsible for this service.

(6) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Mobile telecommunications service is not provided at rates which render the service unaffordable to a majority of the rural persons.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

(e) RUS does not consider mobile telecommunications service facilities a duplication of existing wireline local exchange service or similar fixed-station voice facilities. RUS may finance mobile telecommunications systems designed to provide eligible services in rural areas under the Rural Electrification Act even though the services provided by the system may incidentally overlap services of existing mobile telecommunications providers.

5. Amend § 1735.14 by:

A. Removing paragraph (c)(1);

B. Redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2), respectively; and

C. Adding paragraph (d).

The addition reads as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an existing RUS telecommunications borrower providing such service.

§ 1735.17 [Amended]

6. Amend § 1735.17 by:

A. Removing paragraph (c)(3); and

B. Redesignating paragraphs (c)(4) and (c)(5) as (c)(3) and (c)(4), respectively.

Dated: February 2, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–3040 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1060]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is seeking public comment on a proposed exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the Board's Regulation Y. The proposed amendment would establish a ''safe harbor'' permitting a bank to offer a credit card that can be used to make purchases from a retailer affiliated with the bank.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Comments should refer to Docket No. R–1060, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW) at any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information (12 CFR 261.14).

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Andrew S. Baer, Attorney (202/452–2246), Legal Division. Users of Telecommunication Device for Deaf (TTD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying the availability or price of a product or service to the purchase by a customer of another product or service offered by the bank or any of its affiliates. A bank engages in a tie for purposes of section 106 by conditioning the availability of, or offering a discount on, one product or service (the ''tying product'') on the condition that the customer obtain some additional product or service (the ''tied product'') from the bank or from any of its affiliates. Violations of section 106 can be addressed by the Board through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other party through an action for damages. 12 U.S.C. 1972, 1973, and 1975.

Section 106 contains an explicit exception (the ''statutory traditional bank product exception'') that permits a bank to tie a product or service to a loan, discount, deposit, or trust service (''a traditional bank product'') offered by that bank. The Board has extended this exception by providing that a bank may condition the availability of, or vary the consideration for, any product or service on the condition that the customer obtain a traditional bank product from an affiliate of the bank (the ''regulatory traditional bank product exception'').[1] The Board adopted the regulatory traditional bank product exception in its present form because inter-affiliate transactions do not appear to pose any greater risk of anti-competitive behavior than intra-bank transactions, and because Congress had extended the statutory traditional bank product exception to cover inter-affiliate transactions for savings associations and their affiliates.[2]

Section 106 authorizes the Board to grant exceptions to its restrictions by regulation or order. On December 7, 1999, the General Counsel of the Board issued a legal interpretation indicating the Board's view that section 106 does not prohibit a credit card bank from issuing a credit card that may be used to make purchases from a retailer affiliated with the credit card bank (''private-label credit card'').[3] The Interpretation did not address the situation where a bank or its retailer affiliate offer discounts on their respective products in connection with a private-label credit card arrangement, as that situation was not presented by the request for an interpretation. The proposed exception also does not cover that situation.

Proposed Rule

The Board is proposing to use its statutory authority to grant a regulatory exemption to section 106 for private-label credit cards that may be used at a retailer affiliated with the issuing bank. The Board is proposing the exception in order to disseminate the Board's view, as reflected in the Interpretation, that such arrangements are not as a general matter anticompetitive, and to create a rule of more general applicability not limited to the facts on which the Interpretation was based.

[1] *See* 12 CFR 225.7(b)(1).

[2] *See* 62 FR 9289, 9314 (February 18, 1997), and 12 U.S.C. 1464(q)(1)(A).

[3] *See* Letter from J. Virgil Mattingly, Jr., to William S. Eckland, Esq., dated December 7, 1999 (the ''Interpretation'').

Applicability of Section 106

Because section 106 prohibits a bank from offering or discounting a product or service on the condition that the customer obtain some additional product or service from the bank or from any of its affiliates, the question arose as to whether a private-label credit card arrangement violates that restriction when credit is extended only when a customer makes a purchase from a retailer affiliated with the issuing bank. Although the extension of credit through the private-label credit card is not conditioned on any particular product being purchased, or on purchases being made from any particular retailer, the lack of a network with other retailers limits the ability of the customer to access that credit other than by purchasing a product or service from the affiliated retailer. In the private-label credit card arrangement described in the Interpretation, there is no contractual limitation on where the card can be used to make purchases. The reason why the private-label credit card can only be used at the affiliated retailer is that the retailer is the only merchant able to communicate with the issuing bank regarding whether credit should be extended on the card.

Exception

The Interpretation reflects the Board's belief that private-label credit cards issued by a bank affiliated with the relevant retailer do not generally involve the type of anticompetitive activity that section 106 was intended to address. Section 106 was intended to prevent banks from using their market power in banking products to gain an unfair competitive advantage in markets for non-banking products and services. The type of private-label credit card arrangements described in the Interpretation do not raise such concerns, however, because they do not involve a banking organization's attempt to expand into retailing, but rather a retailer's attempt to provide an additional convenience for its customers. Additionally, because the same products and services can be purchased from the retailer for the same price using payment methods other than the private-label credit card, customers wishing to purchase those products and services are not coerced into using the private-label credit card. The Interpretation also noted that such transactions are driven by the customer's desire to purchase the product or service, not by the availability or nonavailability of credit from the affiliated bank.

For these reasons, the Board is proposing to establish, through a regulatory exception, a safe harbor for private-label credit card arrangements where such cards may only be used to make purchases from a retailer affiliate of the issuing bank. The proposed safe harbor is consistent with the concerns of section 106 about anticompetitive behavior. The proposal requires that the products or services be available for purchase at the same price by means other than the private-label credit card, such as cash or credit cards issued by a third party. Furthermore, the issuing bank may not discount the credit it offers through the private-label credit card to customers who use the card to make purchases at the bank's retailer affiliate. Because a customer could purchase any product or service from the retailer for the same price, regardless of the payment method, the only incentive for the customer to use the private-label credit card is the convenience it offers as an alternative source of credit for use in making purchases from the retailer affiliate. For this reason, the Board does not believe that the proposed rule would allow coercive or anticompetitive practices, or otherwise contravene the purposes of section 106.

Finally, the Board believes that the proposed rule would benefit the public by providing consumers with alternative sources of consumer credit.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

Regulatory Flexibility Act

This proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is intended to allow affected businesses to expand the services they may offer to customers.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.7, a new paragraph (b)(4) is added to read as follows:

§ 225.7 Exceptions to tying restrictions.

(b) * * *

(4) *Safe harbor for retailer-affiliated credit card banks.* Issue credit cards that may be used to purchase products or services from a retailer affiliated with the bank, if:

(i) The products or services may be purchased from the retailer affiliate using other payment methods, including credit cards issued by other banks;

(ii) The bank does not discount the credit it offers through the credit card to customers of its retailer affiliate; and

(iii) The retailer affiliate of the bank does not discount its products or services when purchased using credit cards issued by the bank.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 7, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–3162 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–05–AD]

Airworthiness Directives; Eurocopter Deutschland GmbH (Eurocopter) Model EC 135 Helicopters

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 Eurocopter Model EC 135 helicopters. This proposal would require replacing a certain oil cooler fan splined drive shaft (shaft) with a different airworthy shaft and re-identifying the part numbers on the oil cooler fans. This proposal is prompted by two incidents in which the shaft broke. The actions specified by the proposed AD are intended to prevent

failure of the shaft, loss of oil cooling, and a subsequent engine shutdown during flight.

DATES: Comments must be received on or before April 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

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 should 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 notice may be changed in light of the comments received.

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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–05–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 135 helicopters. The LBA advises that breakage of fan drive shafts, which occurred on two helicopters, resulted in failure of the fan and reduced oil cooling.

Eurocopter has issued Eurocopter Alert Service Bulletin No. EC 135–79A–001, dated January 23, 1998 (ASB), which specifies replacing the ''shafts with spline'' with new reinforced shafts. The LBA classified this ASB as mandatory and issued AD No. 1998–109, dated February 26, 1998, in order to assure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model EC 135 helicopters of the same type design registered in the United States, the proposed AD would require replacing each shaft, part number (P/N) L 792M3004 225, with an airworthy shaft, P/N L 792M3004 235; re-identifying the left oil cooler fan, P/N L792M3004 102 with P/N L 792M3004 103, and right oil cooler fan, P/N L792M3005 102 with P/N L 792M3005 103, and reflecting these changes in the gearbox component history card or equivalent record. Replacing, re-identifying, and recording these changes would be considered terminating actions for the requirements of this AD.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to replace and re-identify the affected parts and record these actions in the gearbox history card or equivalent record, and that the average labor rate is $60 per work hour. The manufacturer has stated in Alert Service Bulletin EC 135–79A–001, dated January 23, 1998, that required parts would be provided at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,160 to accomplish the proposed actions on all the U.S. fleet.

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 a new airworthiness directive to read as follows:

Eurocopter Deutschland GmbH: Docket No. 99–SW–05–AD.

Applicability: Model EC 135 helicopters, serial numbers 0005 through 0071, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopter that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 50 hours time-in-service, unless accomplished previously.

To prevent failure of an oil cooler fan splined drive shaft (shaft), loss of oil cooling, and a subsequent engine shutdown during flight, accomplish the following:

(a) Replace each shaft, part number (P/N) L 792M3004 225, with an airworthy shaft, P/N L 792M3004 235.

(b) Re-identify the P/N on each oil cooler fan (fan) using a rubber stamp or smudge-proof paint or equivalent as follows:

(1) On the left fan, change the P/N from L 792M3004 102 to L 792M3004 103.

(2) On the right fan, change the P/N from L 792M3005 102 to L 792M3005 103.

(c) Change the P/N on the gearbox component history card or equivalent record to reflect the revised part numbers.

Note 2: Eurocopter Alert Service Bulletin No. EC 135–79A–001, dated January 23, 1998, pertains to the subject of this AD.

(d) Replacing the shaft, re-identifying the fans, and recording this on the gearbox component history card or equivalent record constitute terminating actions for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD No. 1998–109, dated February 26, 1998.

Issued in Fort Worth, Texas, on February 7, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–3224 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–39–AD]

Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, that currently requires inspecting the main gearbox suspension bi-directional cross-beam (cross-beam) for cracks, and replacing the cross-beam if a crack is found. This action would require the same inspections as the existing AD but would add the time intervals for performing repetitive dye-penetrant inspections on cross-beams with 5,000 or more hours time-in-service (TIS). This proposal is prompted by the discovery that time intervals for performing the required dye-penetrant inspections are not included in the existing AD. The actions specified by the proposed AD are intended to prevent failure of the cross-beam that could cause the main gearbox to pivot resulting in severe vibrations and a subsequent forced landing.

DATES: Comments must be received on or before April 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5490, fax (817) 222–5961.

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 should 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 notice may be changed in light of the comments received.

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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–39–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–39–AD, 2601

Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 19, 1998, the FAA issued AD 98–14–01, Amendment 39–10635 (63 FR 35128, June 29, 1998), to require visual and dye-penetrant inspections of the cross-beam for cracks and replacement with an airworthy cross-beam if a crack is found. That action was prompted by several reports of cracks in the cross-beam. The requirements of that AD are intended to provide a terminating action to prevent failure of the cross-beam that could cause the main gearbox to pivot resulting in severe vibrations and a subsequent forced landing.

Since the issuance of that AD, the FAA has discovered that the time intervals for performing the required repetitive dye-penetrant inspections on cross-beams with 5,000 or more hours TIS were not included. The initial dye-penetrant inspection for cracks must be performed when the cross-beams attain 5,000 hours TIS or 2,750 cycles, whichever occurs first. Thereafter, repetitive dye-penetrant inspections for cracks must be performed at intervals not to exceed 550 hours TIS or 2,750 operating cycles, whichever occurs first.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters of the same type design, the proposed AD would supersede AD 98–14–01 to require, at specified time intervals or cycles, repetitive visual and dye-penetrant inspections of the cross-beam for cracks, and replacing, if necessary, the cross-beam with an airworthy cross-beam.

The FAA estimates that 454 helicopters of U.S. registry would be affected by this proposed AD; that it would take approximately 0.5 work hour per helicopter to accomplish each visual inspection, with an estimated average of 150 visual inspections per helicopter, 3 work hours per helicopter to accomplish a dye-penetrant inspection, with an estimated average of 3 dye-penetrant inspections per helicopter, and 6 work hours per helicopter to replace the cross-beam, if necessary; and that the average labor rate is $60 per work hour. Parts would cost approximately $6,000 per cross-beam. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,175,600 to perform 150 visual inspections and an average of 3 dye-penetrant inspections per helicopter and to replace the cross-beam on all 454 helicopters.

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 removing Amendment 39–10635 (63 FR 35128, June 29, 1998) and by adding a new airworthiness directive (AD) to read as follows:

Eurocopter France: Docket No. 99–SW–39–AD. Supersedes AD 98–14–01, Amendment 39–10635, Docket No. 97–SW–25–AD.

Applicability: Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, with main gearbox suspension bi-directional cross-beam (cross-beam), part number (P/N) 350A38–1018–all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cross-beam that could lead to rotation of the main gearbox resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For cross-beams having 2,000 or more hours time-in-service (TIS) or 10,000 or more operating cycles, whichever occurs first:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Within 30 hours TIS, and thereafter at intervals not to exceed 30 hours TIS or 150 operating cycles, whichever occurs first, visually inspect the cross-beam for cracks in accordance with paragraph 2.B.1 of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997.

(2) If a crack is found remove the cross-beam and replace it with an airworthy cross-beam.

(b) For cross-beams having 5,000 or more hours TIS:

(1) In addition to continuing the repetitive inspections of paragraph (a)(1), before further flight, and thereafter at intervals not to exceed 550 hours TIS or 2,750 operating cycles, whichever occurs first, perform a dye-penetrant inspection in accordance with paragraph 2.B.2) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1996.

(2) If a crack is found remove the cross-beam and replace it with an airworthy cross-beam.

(c) Prior to installing any replacement cross-beams, regardless of TIS or operating cycles, inspect the replacement cross-beam in accordance with paragraph (b)(1) of this AD.

(d) Modifying the helicopter in accordance with paragraph 2.B of the Accomplishment Instructions in Eurocopter Service Bulletin No. 63.00.07, applicable to Model AS–350B, BA, B1, B2, and D helicopters, or Eurocopter Service Bulletin No. 63.00.13, applicable to Model AS–355E, F, F1, F2, and N helicopters, both dated April 7, 1997, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–156–071(B)R1 and AD 96–155–053(B)R1, both dated June 4, 1997.

Issued in Fort Worth, Texas, on February 4, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–3225 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE99

Technical Revisions to Medical Criteria for Determinations of Disability

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We are proposing to make a number of technical revisions to the Listing of Impairments (the listings). We use the listings to adjudicate claims for disability under titles II and XVI of the Social Security Act (the Act) when we evaluate claims of individuals at steps 3 of our sequential evaluation processes for adults and children. The proposed changes reflect advances in medical knowledge, treatment, and terminology, clarify certain listing criteria, remove listings that we rarely use or that are redundant, and add new listings consistent with current medical practice.

These proposed revisions are technical changes that are intended to clarify or modify current language to improve understanding and usability. They are not intended to be a comprehensive update of the listings.

DATES: To be sure that your comments are considered, we must receive them no later than April 11, 2000.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703, sent by telefax to (410) 966–2830, sent by e-mail to ''regulations@ssa.gov'', or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Carolyn Kiefer, Social Insurance Specialist, Office of Disability, Social Security Administration, 3–B–9 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–9104 or TTY (410) 966–5609.

SUPPLEMENTARY INFORMATION:

Background

Title II of the Act provides for the payment of disability insurance benefits to workers insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, title XVI of the Act provides for Supplemental Security Income (SSI) payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, ''disability'' means that an impairment(s) results in an inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, ''disability'' means that an impairment(s) results in ''marked and severe functional limitations.'' Under both title II and title XVI, disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

The process for determining whether an individual (except for an individual under age 18 claiming SSI benefits based on disability) is disabled based on the statutory definition is set forth in our longstanding regulations at §§ 404.1520 and 416.920. These regulations provide for a sequential evaluation process for evaluating disability. There is a separate sequential evaluation process described in regulations at § 416.924 for individuals under age 18 claiming SSI benefits based on disability. At step 3 of both sequential evaluation processes we ask the same question: Whether an individual who is not engaging in substantial gainful activity and who has an impairment(s) that is severe, has an impairment(s) that meets or equals in severity the criteria of an impairment listed in appendix 1 of subpart P of part 404, the listings. The listings describe, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity (or in the case of a child under age 18 claiming SSI benefits based on disability, to cause marked and severe functional limitations). Although the listings are contained only in part 404, they are referenced by subpart I of part 416.

The listings are divided into Part A and Part B. The criteria in Part A are applied in evaluating impairments of persons age 18 or over. The criteria in Part A may also be used to evaluate impairments in persons under age 18 if the disease processes have a similar effect on adults and children. In evaluating disability for a person under age 18, we first use the criteria in Part B and, if the criteria in Part B do not apply, we use the criteria in Part A (see §§ 404.1525 and 416.925).

These changes are not intended to be a comprehensive update and revision of the listings. We continue to review each of the body system listings to determine appropriate revisions and updates of a more substantive nature. If we determine that more substantive revisions are necessary, we will publish a notice in the **Federal Register** describing those proposed revisions and requesting public comments. Therefore, we are now requesting comments only on the specific technical changes we are

proposing in this notice of proposed rulemaking.

The following is a detailed summary of the proposed revisions and our reasons for proposing these changes.

Explanation of Proposed Revisions

We propose to revise the language throughout all listings regarding references to ''X-ray(s),'' roentgenograms (which is another word for X-rays), and radiographic studies (which is another process similar to roentgenography), to include ''other appropriate medically acceptable imaging'' as satisfactory medical evidence. The proposed changes occur in the following sections and/or listings:

Sections 1.00A, 1.00B and 1.00C of the preface to the musculoskeletal body system and Listings 1.03, 1.04, 1.05, 1.08, 1.09, and 1.11;

Section 2.00B2 of the preface to the special senses and speech body system;

Section 4.00C3 of the preface to the cardiovascular system;

Section 5.00C of the preface to the digestive system and Listings 5.03, 5.04, and 5.05;

Listing 6.02C1 of the genito-urinary system;

Listing 7.16A of the hemic and lymphatic system;

Listing 9.03A of the endocrine system;

Listing 14.08M6 of the immune system;

Section 100.00B of the preface to growth impairments;

Listings 101.02A3 and 101.08 of the musculoskeletal system;

Listing 103.04B3 of the respiratory system;

Section 104.00E of the preface to the cardiovascular system;

Section 105.00B of the preface to the digestive system and Listings 105.05A and 105.05C;

Section 113.00B of the preface to the neoplastic diseases; and,

Listing 114.08N6 of the immune system.

We are proposing these changes to recognize that there have been significant advances in medical imaging, such as (but not limited to) computerized axial tomography (CAT scan) and magnetic resonance imaging (MRI), and to increase the types of evidence that can be used to meet the listings. Under §§ 404.1525 and 416.925 of our regulations, an individual's impairment ''meets'' the criteria of a given listing only by showing the same findings that are required in the listing. Because of this, an individual who has all of the findings required by a listing except X-ray evidence but who has the same or better information from a CAT scan, MRI, or other medically acceptable modern imaging technique than can be gotten from X-ray cannot meet the listing; instead, we must find that the individual's impairment medically equals the listing. The proposed changes would allow us to find that such individuals have impairments that meet these listings. We also made the proposed phrase nonspecific to allow for flexibility in the use of the use of the listings should new medically appropriate imaging techniques be developed in the future.

We are also proposing to add a brief explanation in the prefaces of the musculoskeletal adult and childhood listings (in paragraphs 1.00B and 101.00B, respectively) to explain what we mean by appropriate medically acceptable imaging techniques, and to explain that we will not purchase such expensive tests as CAT scans or MRIs in the course of obtaining documentation, but we will consider the results of these tests if they are available.

1.01 and 101.01 Category of Impairments, Musculoskeletal

We are making a correction to Listing 1.09 to move the word ''of'' to its proper placement following the parenthetical text that describes what we mean by ''Amputation or anatomical deformity.'' The ''of'' is currently incorrectly placed after the word ''deformity,'' and before the explanatory parenthetical language.

We are proposing to amend childhood Listing 101.08, *Chronic osteomyelitis,* to make it consistent with the language and criteria of adult Listing 1.08, which addresses osteomyelitis or septic arthritis. Since the adult listing is more complete and comprehensive, we are amending the childhood listing to be consistent with the adult listing.

2.00 and 102.00 Special Senses and Speech

We propose to revise the heading of 2.00A to read ''*Disorders of Vision*'' because the term currently used, ''*Ophthalmology,*'' is most commonly used to define the branch of medicine that deals with the anatomy, physiology, and pathology of the eye, whereas these listings, in fact, address visual disorders.

We propose to remove the word ''central'' in referring to vision and visual acuity throughout 2.00 and 102.00 because it is redundant. ''Central vision'' is medically synonymous with ''visual acuity.'' We propose to revise 2.00A1 to explain that diseases or injury of the eyes may result in loss of visual acuity or loss of the peripheral field. It is the loss of visual acuity that results in inability to distinguish detail and prevents reading and fine work, while the loss of the peripheral field restricts the ability of an individual to move about freely. We propose to clarify this section by stating that the extent of impairment of sight should be determined by visual acuity and peripheral field testing. Likewise, in 2.00A2, with the removal of the word ''central,'' we also propose to revise the opening sentence to clarify that loss of visual acuity may result in impaired distant and/or near vision (not ''caused by'' impaired vision).

Thus, we are proposing to remove the word ''central'' from the following: 2.00A1, 2.00A2, 2.00A5, 2.00A6, 2.02, Table No. 1 and its footnotes 2 and 3, 102.00A, and 102.02.

Also, we propose to further revise Table No. 1 by adding the word ''acuity'' to the first line of the chart, ''Percent visual acuity efficiency,'' and also to the title, ''Percentage of Visual Acuity Efficiency Corresponding to Visual Acuity Notations * * *''.

Additionally, we propose clarifying the language of Listing 2.04 by replacing the phrase ''central visual efficiency'' with the phrase ''visual acuity efficiency.''

We propose to revise 2.00B3 by removing the word ''organic'' from its title, removing the first sentence of the section, and amending the second sentence to clarify that the ability to produce speech by any means includes the use of mechanical or electronic devices that improve voice or articulation. Also in this section, we propose to correct the reference to ''neurologic'' disorders by appropriately calling them ''neurological'' disorders.

We propose to remove Listing 2.05, *Complete homonymous hemianopsia* (with or without macular sparing) because the language of 2.05 now directs that this disorder should be evaluated under Listing 2.04. Since we are not proposing to change Listing 2.04 in any substantive way, we will still use this listing to evaluate complete homonymous hemianopsia and there is no need to retain the separate listing.

We propose to revise Listing 2.09, *Organic loss of speech,* to remove the word ''organic'' because we believe that the cause of loss of speech (*i.e.,* whether it is or is not ''organic'') should be immaterial for purpose of applying this listing. We also propose to change the word ''and'' to ''or'' to clarify that the inability to produce speech that can be heard, understood, *or* sustained will meet the listing, instead of the requirement under the current language that all three of these factors be present. We believe that any one of these factors is sufficient to establish that an

individual has a listing-level impairment.

3.00 and 103.00 Respiratory System

In the listing preface, we propose to revise some of the technical language dealing with the requirements for spirometry calibration and testing for diffusing capacity of the lungs for carbon monoxide (DLCO) to comply with the standards of current medical practice.

In 3.00E and 103.00B, *Documentation of pulmonary function testing,* we propose to revise the last sentence of the third paragraph of each section to explain that the testing device must have a daily recorded calibration of volume units performed sometime prior to the pulmonary function study. This revises the current requirement for separate calibration tracings to be performed at the time each pulmonary function test is performed. We believe a single daily calibration of the testing device is sufficient to provide accurate pulmonary measurements for purposes of our listings.

In 3.00F1, *Diffusing capacity of the lungs for carbon monoxide (DLCO),* fifth paragraph, fourth and fifth sentences, we are proposing the deletion of the reference to the algorithm used to calculate test results and the language regarding ''independent calculation of results.'' We believe this algorithm no longer needs to be provided in the documentation of DLCO since adjudicators are not expected to recompute the test results. Rather, we are asking that the file include documentation of the source of the predicted equation to permit adjudicators to verify that the test was performed adequately.

3.01 and 103.01 Category of Impairments, Respiratory System

We propose to add a new listing addressing lung transplants for both adults and children. Listing 3.11 for adults and Listing 103.05 for children, *Lung transplant,* is proposed to be consistent with other organ transplant listings and to provide that an individual undergoing a lung transplant will be considered under a disability for 12 months following the date of surgery with evaluation of any residual impairment thereafter.

4.00 and 104.00 Cardiovascular System

In 4.00A, *Introduction,* fourth paragraph, second sentence, and 104.00A, *Introduction,* sixth paragraph, second sentence, we propose to revise the language to change the word ''make'' to the word ''consider'' in the clause referring to making a medical equivalence determination in the case of an adult, and for children, a medical or functional equivalence determination. The current language could be misinterpreted to mean that, when an individual has a medically determinable impairment that is not listed, or a combination of impairments no one of which meets a listing, we will find that his or her impairment is medically equivalent to a listing, or for children, medically or functionally equivalent to a listing. Our intent has always been to indicate only that we will consider whether the impairment or combination of impairments is medically equivalent (or for children medically or functionally equivalent) to a listing. This is only a clarification of what we have always intended by the language in these sections.

5.00 and 105.00 Digestive System

As discussed above, we are proposing to amend Listings 5.05A and 105.05C to allow for documentation of esophageal varices by X-rays, endoscopy, or other appropriate medically acceptable imaging. This will allow for changes in medical technology over time and will eliminate the current unnecessary language differences in the parenthetical portion of these listings.

We propose to add a new listing to both the adult and childhood listings for the digestive system to address liver transplantation in keeping with our other organ transplantation listings. For adults, the new listing will be 5.09, *Liver transplant;* for children, it will be 105.09, *Liver transplant.*

Also, we are correcting a typographical error in 5.00C.

7.00 and 107.00 Hemic and Lymphatic System

We propose to add T-cell lymphoblastic lymphoma to the discussion of acute leukemia in sections 7.00E and 107.00C as well as in Listings 7.11 and 107.11. This disorder follows the same course and requires the same treatment as acute leukemia and is just as serious. By including this disorder in the preface and as a listed impairment in both the adult and childhood listings, we believe evaluation will be simplified by specifically directing adjudicators to the criteria for evaluating this disease.

We propose to amend the reference to bone marrow transplantation in Listing 7.17, *Aplastic anemias or hematologic malignancies (excluding acute leukemia),* to ''bone marrow or stem cell transplantation'' to add the new medical technique of stem cell transplantation which is comparable to bone marrow transplantation.

8.01 Category of Impairments, Skin

We are correcting a spelling error in Listing 8.06. The correct name of this impairment is *Hidradenitis suppurative, acne conglobata.*

9.01 Category of Impairments, Endocrine System

We propose to revise Listing 9.02, *Thyroid Disorders,* to remove paragraph A, which refers to ''Progressive exophthalmos as measured by exophthalmometry,'' because this complication now rarely occurs due to advances in treatment for thyroid disease.

11.00 and 111.00 Neurological

We are proposing changes in the language that we currently use for epilepsy and its treatment throughout these listings to make our listing language consistent with current medical terminology. For example, we propose changing the term ''convulsive disorders'' in 11.00A to ''epilepsy,'' and changing the references to ''anticonvulsive'' treatment and drugs to ''antiepileptic'' treatment and drugs to reflect current medical terminology. In keeping with these changes in terminology, we are also proposing changing the descriptions of the categories of epilepsy under Listings 11.02 and 11.03 in Part A, and Listings 111.02 and 111.03 in Part B. In place of the term major motor seizures (11.02 and 111.02) we are proposing ''convulsive epilepsy,'' and for the term minor motor seizures (11.03 and 111.03), we are proposing ''nonconvulsive epilepsy.'' These terms are in keeping with current medical terminology.

We also propose to remove the requirement for electroencephalogram (EEG) evidence to support the existence of epilepsy throughout the neurological listings with the exception of cases involving nonconvulsive epilepsy in children. This is the only category of epilepsy in which an EEG is the definitive diagnostic tool; in all other situations of epilepsy, it is rare for an EEG to confirm the presence of a seizure disorder.

We propose to amend the language of Listing 111.02B3 by changing it from ''significant emotional disorder'' to ''significant mental disorder.'' This clarifies the nature of the impairment identified, *i.e.,* a defined mental impairment, and is consistent with other listing terminology.

We propose to remove Listing 11.15, *Tabes dorsalis,* because the availability of effective screening tests and treatment have markedly reduced the

incidence of this disorder. With the capability to do early identification and treatment in cases of syphilis, the disease that leads to Tabes dorsalis, we believe this listing is no longer needed.

With the proposal to remove Listing 11.15, we are also proposing to remove the reference to 11.15B currently in Listing 11.17A, which deals with disorganization of motor function in degenerative diseases such as Huntington's chorea and Friedreich's ataxia. The disorganization of motor function described in Listing 11.04B includes disturbances of gait as described in 11.15B, so we believe that the reference to 11.04B is sufficient to address the manifestations of the degenerative diseases covered by Listing 11.17.

12.01 and 112.01 Category of Impairments, Mental

We are proposing to highlight a portion of the language in the capsule definition of Listing 12.05 by italicizing it. Listing 12.05 deals with mental retardation and autism. Mental retardation is defined as a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). To draw the user's attention to the portion dealing with the time period for the manifestations of these deficits, we propose to italicize the text *initially manifested during the developmental period (before age 22).*

We are proposing to correct an error in Listing 112.05F1 and 112.05F2. The word ''limitations'' should be ''limitation.'' This is consistent with the wording of the adult Listing 12.05C, ''imposing additional and significant work-related limitation of function.''

13.01 Category of Impairments, Neoplastic Diseases—Malignant

We propose to amend Listing 13.08, *Thyroid gland,* adding another criterion, ''Anaplastic carcinoma of the thyroid.'' This would be designated as 13.08B, and the current listing language would become 13.08A. Anaplastic carcinoma of the thyroid is a distinct type of carcinoma that can be specified as part of this listing because it is of the same level of severity as the current listing and has a poor prognosis. We believe that identifying it separately will assist adjudicators in evaluating thyroid neoplasms.

Clarity of These Proposed Rules

Executive Order 12866 and the President's memorandum of June 1, 1998, (63 F.R. 31885), require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in these rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make these rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make these rules easier to understand?

Electronic Versions

The electronic file of this document is available on the internet at http://www.access.gpo.gov/su__docs/aces/aces140.html. It is also available on the internet site for SSA (i.e., ''SSA Online'') at *http://www.ssa.gov/.*

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: January 28, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are proposing to amend part 404, subpart P, and part 416, subpart I of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P [Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

2. Appendix 1 to subpart P of part 404 is amended as follows:

a. Section 1.00 in part A of appendix 1 is amended:

(1) By revising the last sentence of paragraph A;

(2) By revising the first sentence in the second paragraph of paragraph B;

(3) By adding a new eighth paragraph to paragraph B; and,

(4) By revising paragraph C;

b. Section 1.03 in part A of appendix 1, paragraph A is revised.

c. Section 1.04 in part A of appendix 1 is amended by revising the introductory text.

d. Section 1.05 in part A of appendix 1 is amended by revising the introductory text in paragraphs A and B.

e. Section 1.08 in part A of appendix 1 is amended by revising the heading.

f. Section 1.09 in part A of appendix 1 is amended by revising the heading.

g. Section 1.11 in part A of appendix 1 is revised.

h. Section 2.00 in part A of appendix 1 is amended:

(1) By revising the heading of paragraph A;

(2) By revising paragraph A1, the first two sentences of paragraph A2, and paragraph A5;

(3) By amending paragraph A6 to remove the word ''central'' in the first, fourth, fifth, and sixth sentences;

(4) By revising the last sentence in the third paragraph of paragraph B2;

(5) By revising paragraph B3;

(6) By amending Table No. 1 by revising the heading to read, ''Percentage of visual acuity efficiency corresponding to visual acuity notations for distance in the phakic and aphakic eye (better eye)'' by revising the heading of the right column on the first line of the table to read, ''Percent visual acuity efficiency''; and by amending footnotes 2 and 3 to Table No. 1 by removing the word ''central.''

i. Section 2.02 in part A of appendix 1 is amended by removing the word ''central'' in the heading.

j. Section 2.04 in part A of appendix 1 is revised.

k. Section 2.05 in part A of appendix 1 is removed and reserved.

l. Section 2.09 in part A of appendix 1 is revised.

m. Section 3.00 in part A of appendix 1 is amended by revising the last sentence in the third paragraph of paragraph E, and by amending paragraph F1 by revising the fourth and fifth sentences of the fifth paragraph.

n. Section 3.11 in part A of appendix 1 is added.

o. Section 4.00, paragraph A, in part A of appendix 1 is amended in the second sentence of the fourth paragraph by revising ''make'' to read ''consider'', and in paragraph C3 by amending the third sentence of the first paragraph.

p. Section 5.00, paragraph C, in part A of appendix 1 is amended in the fourth sentence by revising ''roentgenograms'' to read ''X-rays or other appropriate medically acceptable imaging,'' and by revising ''impairmentich'' to read ''impairment which.''

q. Section 5.03 in part A of appendix 1 is revised.

r. Section 5.04 in part A of appendix 1 is amended by revising the heading and by revising paragraph C.

s. Section 5.05 in part A of appendix 1 is amended by revising the first sentence in paragraph A.

t. Section 5.09 in part A of appendix 1 is added.

u. Section 6.02 in part A of appendix 1 is amended by revising paragraph C1.

v. Section 7.00 in part A of appendix 1 is amended by revising the heading and the first sentence of the first paragraph of paragraph E.

w. Section 7.11 in part A of appendix 1 is amended by revising the heading.

x. Section 7.16 in part A of appendix 1 is amended by revising paragraph A.

y. Section 7.17 in part A of appendix 1 is amended by revising the first sentence.

z. Section 8.06 in part A of appendix 1, the heading is amended by revising ''Hydradenitis'' to read ''Hidradenitis.''

aa. In section 9.02 in part A of appendix 1, the word ''With:'' following the heading and paragraph A are removed and the paragraph designation ''B'' is removed from paragraph B.

bb. Section 9.03, paragraph A, in part A of appendix 1 is revised.

cc. Section 11.00, paragraph A, in part A of appendix 1 is amended by revising the heading, by revising the first sentence in the first paragraph, by removing the second paragraph, by redesignation the third paragraph as the second paragraph and by amending the first, second and third sentences in the redesignating second paragraph to revise the word ''anticonvulsive'' to read ''antiepileptic.''

dd. Section 11.02 in part A of appendix 1 is amended by revising the heading.

ee. Section 11.03 in part A of appendix 1 is amended by revising the heading.

ff. Section 11.15 in part A of appendix 1 is removed and reserved.

gg. Section 11.17, paragraph A, in part A of appendix 1 is amended by removing the words ''or 11.15B''.

hh. Section 12.05 in part A of appendix 1 is amended by revising the first sentence of the introductory text.

ii. Section 13.08 in part A of appendix 1 is revised.

jj. Section 14.08 in part A of appendix 1 is amended by revising paragraph M6.

kk. Section 100.00, paragraph B, in part B of appendix 1 is revised.

ll. Section 101.00, paragraph B, in part B of appendix 1 is amended by adding a second paragraph.

mm. Section 101.02, paragraph A3, in part B of appendix 1 is revised.

nn. Section 101.08 in part B of appendix 1 is revised.

oo. Section 102.00 in part B of appendix 1, is amended by removing the word ''central'' from the first and second sentences of paragraph A.

pp. Section 102.02 in part B of appendix 1 is amended by removing the word ''central'' from the heading.

qq. Section 103.00, paragraph B, in part B of appendix 1 is amended by revising last sentence of the third paragraph.

rr. Section 103.04, paragraph B3, in part B of appendix 1 is revised.

ss. Section 103.05 in part B of appendix 1 is added after Table III.

tt. Section 104.00, paragraph A, in part B of appendix 1 is amended in the last sentence of the sixth paragraph by revising ''make a determination'' to read ''consider,'' and paragraph E is amended by revising the first sentence of the third paragraph.

uu. Section 105.00 in part B of appendix 1, is amended to revise the first sentence in paragraph B.

vv. Section 105.05, paragraphs A and C, in part B of appendix 1 are revised.

ww. Section 105.09 in part B of appendix 1 is added.

xx. Section 107.00, paragraph C, in part B of appendix 1 is amended by revising the heading and by revising the first sentence of the first paragraph.

yy. Section 107.11 in part B of appendix 1 is amended by revising the heading.

zz. Section 111.00 in part B of appendix 1, paragraph A is revised and paragraph B is amended by revising the heading, and by removing the second sentence.

aaa. Section 111.02 in part B of appendix 1 is amended by revising the headings of paragraphs A and B; by revising the first sentence of the introductory text of paragraphs A and B; and by revising paragraph B3.

bbb. Section 111.03 in part B of appendix 1 is amended by revising the heading.

ccc. Section 112.05, paragraphs F1 and F2, in part B of appendix 1 are amended by revising ''limitations'' to read ''limitation.''

ddd. Section 113.00 in part B of appendix 1, is amended by revising the third sentence in paragraph B.

eee. Section 114.08, paragraph N6, in part B of appendix 1, paragraph N6 is revised.

The added and revised text is as follows:

Appendix 1 to Subpart P of Part 404-Listing of Impairments

* * * * *

1.00 Musculoskeletal System

A. * * * Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and abnormalities as shown by X-ray or other appropriate medically acceptable imaging.

B. * * *

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms or other appropriate medically acceptable imaging. * * *

* * * * *

Medically acceptable imaging includes, but is not limited to, X-ray imaging, computerized axial tomography (CAT scan), magnetic resonance imaging (MRI), with or without contrast material, and radionuclear bone scans. While any appropriate medically

acceptable imaging is useful in establishing the diagnosis of musculoskeletal impairments, some tests, such as CAT scans and MRIs are quite expensive and some, such as myelograms, are invasive and may involve significant risk. If the results of these tests are available from the claimant or other sources at no or minimal cost to the agency, they will be considered in the evaluation of the claim. However, expensive tests and tests that may involve significant risk to the claimant, such as myelograms, will not be ordered.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12) or soft tissue injuries of a lower or upper extremity (see 1.13), *i.e.,* there have been no significant changes in physical findings or findings as shown by x-rays or other appropriate medically acceptable imaging techniques for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

* * * * *

1.03 Arthritis of a major weight-bearing joint (due to any cause):

* * * * *

A. Gross anatomical deformity of hip or knee (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) supported by x-ray or other appropriate medically acceptable imaging evidence showing either significant joint space narrowing or significant bony destruction, and markedly limiting ability to walk or stand; or,

* * * * *

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause):*

With history of persistent joint pain and stiffness, signs of marked limitation of motion of the affected joints on current physical examination, and X-ray or other appropriate medically acceptable imaging evidence of either significant joint space narrowing or significant bony destruction. With:

* * * * *

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray or other appropriate medically acceptable imaging evidence of:

* * * * *

B. Osteoporosis, generalized (established by X-ray or other appropriate medically acceptable imaging) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray or other appropriate medically acceptable imaging evidence of either:

* * * * *

1.08 *Osteomyelitis or septic arthritis (established by X-ray or other appropriate medically acceptable imaging):*

* * * * *

1.09 *Amputation or anatomical deformity (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray or other appropriate medically acceptable imaging evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability) of:*

* * * * *

1.11 *Fracture of the femur, tibia, tarsal bone or pelvis* with solid union not evident on X-ray or other appropriate medically acceptable imaging, and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

* * * * *

2.00 Special Senses and Speech

A. Disorders of Vision

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of visual acuity or loss of the peripheral field. Loss of visual acuity results in inability to distinguish detail and prevents reading and fine work. Loss of the peripheral field restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual acuity and peripheral field testing.

2. *Visual acuity.* Loss of visual acuity may result in impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. * * *

* * * * *

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in reduction of visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of visual acuity efficiency and the percentage of visual field efficiency. (See tables no. 1 and 2, following 2.09.)

* * * * *

B. * * *

2. * * *

* * * * *

* * * When polytomograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained in addition to reports of skull and temporal bone X-rays or other appropriate medically acceptable imaging.

3. *Loss of speech.* In evaluating the loss of speech, the ability to produce speech by any means includes the use of mechanical or electronic devices that improve voice or articulation. Impairment of speech due to neurological disorders should be evaluated under 11.00—11.19.

* * * * *

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining visual acuity efficiency and the percent of remaining visual field efficiency.)

2.05 [Removed and reserved]

* * * * *

2.09 *Loss of speech* due to any cause with inability to produce by any means speech which can be heard, understood, or sustained.

* * * * *

3.00 Respiratory System

* * * * *

E. *Documentation of pulmonary function testing.*

* * * * *

* * * If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the testing device must have had a recorded calibration performed previously on the day of the spirometric measurement.

* * * * *

F. *Documentation of chronic impairment of gas exchange.*

1. * * *

* * * * *

* * * The percentage concentrations of inspired O_2 and inspired and expired CO and He for each of the maneuvers should be provided. Sufficient data must be provided, including documentation of the source of the predicted equation, to permit verification that the test was performed adequately, and that, if necessary, corrections for anemia and/or carboxyhemoglobin were made appropriately.

* * * * *

3.11 *Lung transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

4.00 Cardiovascular System

* * * * *

C. * * *

3. * * * In selected cases, these tests may be purchased after a medical history and physical examination, report of chest x-rays or other appropriate medically acceptable imaging, ECGs, and other appropriate tests have been evaluated, preferably by a program physician with experience in the care of patients with cardiovascular disease. * * *

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging)* with weight loss as described under listing 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging).* With:

* * * * *

C. Recurrent obstruction demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging; or,

* * * * *

5.05 *Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* * * *

A. Esophageal varices (demonstrated by X-ray, endoscopy, or other appropriate medically acceptable imaging) with a documented history of massive hemorrhage attributable to these varices. * * *

* * * * *

5.09 *Liver transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

* * * * *

6.02

* * * * *

C. * * *

1. Renal osteodystrophy manifested by severe bone pain and abnormalities shown by

appropriate radiographic or other medically acceptable imaging (*e.g.,* osteitis fibrosa, marked osteoporosis, pathologic fractures); or

* * * * *

7.00 Hemic and Lymphatic System

* * * * *

E. *Acute leukemia or T-cell lymphoblastic lymphoma.* Initial diagnosis of acute leukemia or T-cell lymphoblastic lymphoma must be based upon definitive bone marrow pathologic evidence. * * *

* * * * *

7.11 *Acute leukemia or T-cell lymphoblastic lymphoma.*

* * * * *

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic or other appropriate medically acceptable imaging evidence of bony involvement with intractable bone pain; or

* * * * *

7.17 *Aplastic anemias or hematologic malignancies (excluding acute leukemia):* With bone marrow or stem cell transplantation. * * *

* * * * *

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray or other appropriate medically acceptable imaging study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

* * * * *

11.00 Neurological

A. *Epilepsy.* In epilepsy, regardless of etiology degree of impairment will be determined according to type, frequency, duration, and sequelae of seizures. * * *

* * * * *

11.02 *Epilepsy-convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.*

* * * * *

11.03 *Epilepsy-nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.*

* * * * *

12.05 *Mental Retardation and Autism:* Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior *initially manifested during the developmental period (before age 22).* * * *

* * * * *

13.08 *Thyroid gland:*

A. Carcinoma with metastases beyond the regional lymph nodes, not controlled by prescribed therapy; or

B. Anaplastic carcinoma of the thyroid.

* * * * *

14.08 *Human immunodeficiency virus (HIV) infection.*

* * * * *

M. * * *

6. Sinusitis documented by radiography or other appropriate medically acceptable imaging.

* * * * *

100.00 Growth Impairment

* * * * *

B. *Bone age determinations* should include a full descriptive report of roentgenograms or other medically acceptable imaging specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms or other appropriate medically acceptable imaging must be obtained currently as a basis for adjudication under 100.03, views or scans of the left hand and wrist should be ordered. In addition, roentgenograms or other appropriate medically acceptable imaging of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

* * * * *

101.00 Musculoskeletal System

* * * * *

B. * * *

Medically acceptable imaging includes, but is not limited to, X-ray imaging, computerized axial tomography (CAT scan), magnetic resonance imaging (MRI), with or without contrast material, and radionuclear bone scans. While any appropriate medically acceptable imaging is useful in establishing the diagnosis of musculoskeletal impairments, many tests, such as CAT scans and MRIs are quite expensive and some, such as myelograms, are invasive and may involve significant risk. If the results of these tests are available from the claimant or other sources at no or minimal cost to the agency, they will be considered in the evaluation of the claim. However, expensive tests and tests that may involve significant risk to the claimant, such as myelograms, will not be ordered.

* * * * *

101.02 *Juvenile rheumatoid arthritis.*

* * * * *

A. * * *

3. Radiographic or other appropriate medically acceptable imaging evidence showing joint narrowing, erosion, or subluxation; or

* * * * *

101.08 *Osteomyelitis or septic arthritis* (established by X-ray or other appropriate medically acceptable imaging):

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory and systemic signs and laboratory findings (e.g., heat, redness, swelling, leucocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or

B. Multiple localizations and systemic manifestations as in A. above.

* * * * *

103.00 Respiratory System

* * * * *

B. * * *

* * *

* * * If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the testing device must have had a recorded calibration performed previously on the day of the spirometric measurement.

* * * * *

103.04 *Cystic fibrosis.*

* * * * *

B. * * *

3. Radiographic or other appropriate medically acceptable imaging evidence of extensive disease, such as thickening of the proximal bronchial airways or persistence of bilateral peribronchial infiltrates; or

* * * * *

103.05 *Lung transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

* * * * *

104.00 Cardiovascular System

* * * * *

E. * * *

Findings of cardiomegaly shown by chest x-ray or other appropriate medically acceptable imaging evidence must be accompanied by other evidence of chronic heart failure or ventricular dysfunction.

* * *

* * * * *

105.00 Digestive System

* * * * *

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic or other appropriate medically acceptable imaging studies, endoscopy, and biopsy reports.

* * *

* * * * *

105.05 *Chronic liver disease.* * * *

A. Inoperable billiary atresia demonstrated by X-ray or other appropriate medically acceptable imaging or surgery; or

* * * * *

C. Esophageal varices (demonstrated by X-rays, endoscopy, or other appropriate medically acceptable imaging); or

* * * * *

105.09 *Liver transplant.* Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment.

* * * * *

107.00 Hemic and Lymphatic System

* * * * *

C. *Acute leukemia or T-cell lymphoblastic lymphoma.* Initial diagnosis of acute leukemia or T-cell lymphoblastic lymphoma must be based upon definitive bone marrow pathologic evidence. * * *

* * * * *

107.11 *Acute leukemia or T-cell lymphoblastic lymphoma.* * * *

* * * * *

111.00 Neurological

A. *Convulsive epilepsy* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include a neurological examination with frequency of episodes and any associated phenomena substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that epilepsy be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of epilepsy when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, an epileptic disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that convulsive episodes have persisted more than three months after prescribed therapy began.

B. *Nonconvulsive epilepsy.* * * *

* * * * *

111.02 *Major motor seizure disorder.*

A. *Convulsive epilepsy.* In a child with an established diagnosis of epilepsy, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. * * *

* * * * *

B. *Convulsive epilepsy syndrome.* In a child with an established diagnosis of epilepsy, the occurrence of at least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. * * *

* * * * *

3. Significant mental disorder; or

* * * * *

111.03 *Nonconvulsive epilepsy.* * * *

* * * * *

113.00 Neoplastic Diseases, Malignant

* * * * *

B. *Documentation.* * * * If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports or reports from other appropriate medically acceptable imaging.* * *

* * * * *

114.08 *Human immunodeficiency virus (HIV) infection.*

* * * * *

N. * * *

6. Sinusitis documented by radiography or other appropriate medically acceptable imaging.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902 (a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

§ 416.926 [Amended]

4. Section 416.926a is amended by removing paragraphs (d) (8) and (9), and redesignating paragraph (d) (10), (11), and (12) as paragraphs (d) (8), (9), and (10).

[FR Doc. 00–2867 Filed 2–10–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF EDUCATION

34 CFR Part 611

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes regulations for the three grant programs included in the Teacher Quality Enhancement Grant Programs, sections 202–204 of the Higher Education Act of 1965 (HEA), as amended. These proposed regulations contain selection criteria that would be used to select applicants for awards under the State Program, Partnership Program, and Teacher Recruitment Program. These proposed regulations also contain certain other requirements that would apply to the programs.

DATES: We must receive your comments on or before March 13, 2000.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, Office of Policy, Planning, and Innovation, 1990 K Street, NW, Washington, DC 20006–8525: Telephone: 202–502–7763. Comments also may be sent by e-mail to: Louis__Venuto@ed.gov or by FAX to; (202) 502–7699. If you prefer to send your comments through the Internet use the following address: comments@ed.gov. You must include the term ''Teacher Quality'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, Office of Policy, Planning, and Innovation, 1990 K Street, NW, Washington, DC 20006–8525: Telephone: (202) 502–7763. Inquiries also may be sent by e-mail to: Louis__Venuto@ed.gov or by FAX to: (202) 260–9272. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in the Department of Education, Teacher Quality Program Office, 1990 K Street NW, 6th floor, Washington, DC. Comments are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

In order to ensure sufficient time to prepare and review grant applications submitted for FY 2000, the Department will need to publish final regulations for these programs as soon as possible after the expiration of the public comment period. For this reason, while you have 30 days to submit public comment, we urge you to submit comments to us on or before February 25, 2000. In addition, we also urge those who wish to comment on the information collection requirements contained in the program application packages to send written comment on or before February 25, 2000. See the discussion in the section entitled ''Paperwork Reduction Act of 1995'' and the addressee identified in that section to whom comments should be sent.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to

review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General

Background

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). This law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the Higher Education Act (HEA), the Teacher Quality Enhancement Grants for States and Partnerships (Teacher Quality Programs). The new Teacher Quality Enhancement Grants Program provides an historic opportunity to effect positive change in the recruitment, preparation, licensing, and on-going support of teachers in America.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation, and recruitment; (2) the Partnership Grants for Improving Teacher Preparation Program, which is designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs), and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom; and (3) the Teacher Recruitment Grants Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. Together, these programs are designed to increase student achievement by supporting comprehensive approaches to improving teacher quality.

State Grants Program (State Program)

The State Grants Program offers a unique opportunity to support far-reaching efforts to redesign teacher education. Through the policy leadership of Governors, State legislatures, and other important partners, the program can assure the statewide support so essential to bringing about the important policy changes needed in teacher recruitment, preparation, licensing and certification, and retention. States are in the position to increase the expectations for newly state-certified and licensed teachers as well as test for and reward high-quality teaching.

Under the program, each State may develop a program application that focuses on activities it chooses to conduct in one or more areas that are key to improving the quality of new teachers. In this regard, areas in which a State may propose to focus include:

- Teacher licensure, certification, and preparation policies and practices, including rigorous alternative routes to certification;
- Reforms that hold institutions of higher education (IHE) with teacher preparation programs accountable for preparing teachers who are highly competent in academic content areas and possess strong teaching skills;
- Wholesale redesign of teacher preparation programs, in collaboration with the schools of arts and sciences, in ways that promote stronger academic content and subject-matter knowledge of students in those programs;
- Improved linkages between IHEs and K–12 schools, with more time spent by college faculty and teacher education students in K–12 classrooms, and greater use of technology in the teacher education programs;
- Use of new strategies to attract, prepare, support, and retain highly competent teachers in high-poverty urban and rural areas;
- Redesign and improvement of existing teacher professional development programs to improve the content knowledge, technology skills, and teaching skills of practicing teachers;
- Improved accountability for high-quality teaching through performance-based compensation and the expeditious removal of incompetent or unqualified teachers while ensuring due process; and
- Efforts to address the problem of social promotion and to prepare teachers to deal with the issues raised by ending social promotion.

Partnership Grants for Improving Teacher Education (Partnership Program)

The purpose of the Partnership Program is to improve student learning by bringing about fundamental change and improvement in traditional teacher education programs. Through multi-year awards to a limited number of highly-committed partnerships, the Partnership Program is intended to ensure that new teachers have the content knowledge and teaching skills they need when they enter the classroom. Section 203(a) and (b) of the HEA provides that partnerships eligible for awards must comprise, at a minimum, a partnership institution, a school of arts and science, and a high-need LEA as the law defines these terms. Partnerships also may include other entities that can contribute expertise, resources or both to the teacher preparation project. A key aspect of the program is the active participation of all members of the partnership in the design and implementation of project activities.

By law, successful applicants must propose to implement certain activities:

- The reform of teacher preparation programs so that these programs become accountable for producing teachers who are highly competent in the academic content areas in which they pan to teach;
- The provision of high quality and sustained pre-service clinical experiences and mentoring for new teachers, together with a substantial increase in the interaction between teachers, principals, and higher education faculty; and
- The creation of opportunities for enhanced and ongoing professional development that improves the academic content knowledge of teachers in fields in which they are or will be certified to teach.

Beyond these minimum requirements, the Partnership program supports activities that propose to educate teachers in ways that reflect best research and practice, and embody high teaching standards. These activities include the preparation of teachers to work with diverse student populations so that *all* students they will teach can achieve to high State and local content and performance standards, and implementation of instructional programs whose effectiveness has been demonstrated through research.

The Partnership Program also seeks to—

- Offer alternative routes into teaching to individuals who may have had careers in other professions, in the military or in other fields, and to educational paraprofessionals;
- Prepare teachers to successfully integrate technology into teaching and learning;
- Require prospective teachers to participate in intensive, structured, and clinically-based experiences with master teachers;
- Offer continuous assistance to graduates during their initial years in the classroom; and
- Prepare school principals, superintendents, and other school administrators to employ strong

management and leadership skills that can help increase student achievement.

Teacher Recruitment Grants Program (Teacher Recruitment Program)

The Teacher Recruitment Program is designed to address the challenge of America's teacher shortage by making significant and lasting systemic changes to the ways that teachers are recruited, prepared, and supported as new teachers in high-need schools. The Teacher Recruitment Program supports projects that use funds to—

- Award scholarships to help students pay the costs of tuition, room, board, and other expenses of completing a teacher training program;
- Provide support services, if needed, to enable scholarship recipients to complete postsecondary education programs; and
- Provide for follow-up services to former scholarship recipients during their first three years of teaching.

Alternatively, funds may be used to develop and implement effective mechanisms to ensure that high-need LEAs and schools are able to effectively recruit highly qualified teachers.

Both States and eligible partnerships may receive awards under the Teacher Recruitment Program. For both States and partnerships, effective relationships and partnerships among all those who will implement project activities are keys to effective Teacher Recruitment Program activities. In particular, out of these partnerships and relationships will come (1) the recruitment strategies that are so vital to meeting the severe teaching needs of the high-need LEAs, (2) the kind of teacher preparation programs, which are built around effective support from both schools of education and schools of arts and science and other areas of the IHE, that recruited individuals will need in order to be effective teachers to the diverse student populations in those LEAs, and (3) the support services these individuals will need once they begin to teach.

The Teacher Recruitment Program also anticipates that projects will provide prospective teachers with high-quality teacher preparation and induction programs that—

- Set high standards for teaching;
- Reflect the best research and practice known across the country; and
- Prepare teachers to use technology in their classrooms.

Finally, all three of the Teacher Quality Enhancement Grant Programs anticipate that when program funding ceases, the work that States and partnerships have begun will continue and be sustained. Therefore, the ability of grantees to sustain activities after the end of the project is a key determinant of success.

Need to Regulate

Regulations are needed in order to establish appropriate selection criteria and a small number of other requirements for Fiscal Year (FY) 2000 and subsequent year competitions under the Teacher Quality programs. As explained in the following discussion, new program-specific selection criteria for competitions conducted under the three Teacher Quality Programs are needed to promote better quality applications and greater consistency among reviewers and across review panels.

On February 8, 1999, the Department published final regulations to govern competitions conducted under the Teacher Quality Enhancement Grant Programs for fiscal year (FY) 1999 (64 FR 6189). In doing so, the Department used its authority under section 437(d) of the General Education Provisions Act to waive rulemaking requirements for regulations governing the first grant competition under a new or substantially revised program. This notice of proposed rulemaking establishes the proposed regulations for the FY 2000 and subsequent year competitions.

The State, Partnership, and Teacher Recruitment Programs are key elements in the Federal government's strategy to support State efforts to improve teacher quality and recruit, prepare, and support new teachers in high-need schools and school districts. The success of these programs depends upon the preparation of applications that are of the highest possible quality, and the ability of reviewers to identify those applicants with the most promise of success. In order to guide the preparation and identification of high-quality applications under any of these three Programs, application selection criteria need to be established.

As a new program in FY 1999, the Teacher Quality Program relied upon general selection criteria in § 75.210 of the Education Department General Administrative Regulations (EDGAR) to evaluate applications submitted under the State and the Teacher Recruitment Programs. The EDGAR criteria were used for these two programs because we believed that program-specific regulations would not be needed to generate high-quality applications and permit reviewers a ready means to evaluate them. However, those reviewing applications under these programs found that, notwithstanding guidance in the program application packages on what high-quality applications likely would contain, submitted applications generally not only lacked sufficient specificity, but also were difficult to evaluate under these general selection criteria.

Hence, the Department's experience with applications submitted under the State and Teacher Recruitment Programs now convinces us that program-specific criteria—rather than those in EDGAR—would assist applicants to write better, more specific proposals that focus more closely on how they would address Title II program goals. We also are convinced that the use of program-specific selection criteria in these two programs would substantially help reviewers to make better judgments as they read, score proposals, and make evaluative comments. Regulations therefore are needed to establish program-specific criteria that reflect the goals and objectives of the Title II statute.

The Department did use program-specific selection criteria rather than general criteria in EDGAR to evaluate both pre-applications and full applications submitted for the initial competition conducted in FY 1999 under the Partnership Program. However, difficulties that reviewers had evaluating those pre-applications and full applications have convinced us that they, too, need to be modified. We now see that, in some respects, those criteria were too general. They helped applicants to sketch a broad vision of their projects, but reviewers often had difficulty finding enough specific detail in the pre-applications and full applications to score them with precision. Reviewers also found that the generality of the program-specific criteria inhibited their ability to make fine distinctions among applications. We believe that revised, more specific, selection criteria for the Partnership Program are needed to improve the quality of applications and the review process.

For the FY 2000 Title II competition, therefore, new program-specific selection criteria have been drafted for all three Teacher Quality Program components. It is expected that these new criteria will provide clearer guidance to proposal writers, and will give reviewers a more reliable scoring system. By using the revised selection criteria, the complete selection process should result in funding strong projects likely to achieve key Title II goals. (Consistent with § 75.210 of EDGAR, the application packages for these three programs will inform the public the total possible score for all criteria that apply to a program, and the assigned

weight or maximum possible score for all criteria that apply to a program, and the assigned weight or maximum possible score for each criterion or factor under that criterion).

Finally, regulations are needed in two other areas. First, all three programs require applicants to develop strategies in comprehensive areas related to teacher preparation, licensure, certification, or recruitment. The experience with the initial grants competition conforms that both reviewers and successful applicants would benefit from having applications include detailed workplans that contain project objectives, activities, benchmarks, responsible parties, time lines, and outcomes. In addition, regulations are needed to clarify over what period of time States are to meet the 50 percent matching requirement in section 205(c) of the statute.

The remainder of this section of this notice explains in more detail the regulations that we are proposing to adopt for the three Teacher Quality Enhancement Grant Programs.

Section 611.2 Pre-Application and Application

Under § 611.2, an applicant for a grant under the Teacher Quality Enhancement Grants Program would be required to submit with its application a proposed multiyear workplan. At a minimum, the applicant would have to specifically identify, for each year of the project, the project's overall objectives, activities the applicant proposes to implement to promote each program objective, benchmarks and time lines for conducting project activities and achieving the project's objectives, who would be responsible for conducting and coordinating each activity, measurable program outcomes that are tied to each program objective, and the evidence by which success in achieving these objectives would be measured. Applicants for grants under subpart C (the Partnership Program) and subpart D (the Teacher Recruitment Program) would only have to provide a workplan if they are invited, based on their pre-applications, to submit a full application.

Finally, § 611.2 would also require any applicant that submits a pre-application for a grant under the Partnership or Teacher Recruitment Program to submit any budgetary information that the Secretary may require in the program's application package.

These workplans are necessary for two reasons. Section 75.112(b) of EDGAR requires all applicants to include a narrative that describes how and when, for each budget year of the project, the applicant plans to meet each project objective. However, for the 1999 grants competition, the submitted applications did not contain the specificity that reviewers desired for making the most informed decisions about the quality of applicants' multiyear plans. This regulation is needed both to address this problem and to ensure that, for those applicants receiving awards, the Department has the information it needs to work with applicants over the life of their projects so that the projects can succeed.

Section 611.3 Procedures for Grant Selection

Section 611.3 sets out the procedures that we would use to select grants for the Teacher Quality Program. In general, we would use the procedures in 34 CFR 75.200–75.222. However, § 611.3 would establish our use of program-specific selection procedures identified in §§ 611.12–611.32 to evaluate applications for each of the three programs, including the use of a competitive priority for the State and Partnership Programs.

In addition, § 611.3 would establish a two-stage application process for both the Partnership and Teacher Recruitment Programs. The proposed regulations would require applicants under either of these Programs to submit a pre-application. We would use the selection criteria established for these pre-applications to determine which applicants should be invited to submit full applications.

A two-stage process was used successfully during the 1999 initial competition under the Partnership Program. We received substantial feedback from applicants who favored this process. They told us that it permitted them to spend more time planning their projects than they would have had under the normal, single-stage, process, and saved those applicants whose pre-applications were not of sufficiently high quality the time and resources needed to prepare a full program application. We also believe that the quality of the full applications likely benefited from the applicants' receipt of reviewers' comments on their pre-applications, and reviewers told us that they appreciated being able to focus their time evaluating a limited number of full applications that reflected sound conceptual thinking. Therefore, we have decided to make the pre-application process a permanent feature of the Partnership Program.

In addition, reviewers of applications submitted under the initial Teacher Recruitment Program grants competition found that many applications lacked the vision and specificity that the Program needs. Given the importance of successful Teacher Recruitment Program projects, we believe that the quality of applications for these projects likewise would be enhanced by use of a pre-application process. For this reason, we are proposing to use this two-step process for both the Partnership and Teacher Recruitment Programs.

In the event that two or more applicants are ranked equally for the last available award under any of the three programs, the proposed regulations would continue a tie-breaking procedure used during the FY 1999 competition. Under this procedure, the Secretary would select the applicant whose activities would focus (or have the most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

Finally, for the initial grant competition under these three programs, we developed program-specific selection criteria only for the Partnership Program. For reasons discussed in the ''Need to Regulate'' section of this preamble, we are proposing program-specific selection criteria for applications submitted under the State and Teacher Recruitment Program, and revised program-specific criteria for applications submitted under the Partnership Program.

Selection Criteria to Govern the State Program

Section 611.11 would establish the selection criteria for the State Program. The criteria would focus on the quality of the project design, the significance of the project, the quality of the resources, and the quality of the management plan and workplan. Section 611.12 would establish selection criteria, which would be used in addition to the selection criteria in § 611.11, for any State Program applicant that proposed teacher recruitment activities. Although teacher recruitment is not required for the State Program, applicants may choose to incorporate teacher recruitment into their projects. If they do so, additional selection criteria would be needed because of the requirements governing use of funds for teacher recruitment activities in sections 202 and 204(d) of the HEA. We therefore have added selection criteria that would specifically address teacher recruitment, so that peer reviewers can judge the quality of the teacher recruitment activities within a State program.

Section 611.13 would establish a competitive preference for the State

Program. As required by section 205(b)(2)(A) of the HEA, the Secretary would determine the extent to which the State's proposed activities in any one or more of three statutory priorities are likely to yield successful and sustained results. The statutory priorities are (1) initiatives to reform State teacher licensure and certification requirements so that current and future teachers possess strong teaching skills and academic content knowledge in the subject areas they will be certified or licensed to teach; (2) innovative reforms to hold IHEs with teacher preparation programs accountable for preparing teachers who are highly competent in the academic content areas and have strong teaching skills, and (3) innovative efforts to reduce the teacher shortage (including the high turnover) of highly competent teachers in high-poverty urban and rural areas.

Selection Criteria to Govern the Partnership Program

Section 611.21 would establish the selection criteria for the pre-application for the Partnership Program. The selection criteria would address project goals and objectives, the level of commitment to the partnership, the quality of key project components, and the anticipated specific outcomes of the project. As with the State Program, because of the requirements governing use of funds for teacher recruitment activities in sections 203 and 204(d) of Title II, the Partnership Program, in § 611.22, would establish additional criteria that would apply to any pre-application that proposes teacher recruitment activities.

Sections 611.23 and 611.24 would establish the selection criteria for the full application. Section 611.23 would apply to all applicants for Partnership program grants, and § 611.24 would apply to those applications that include teacher recruitment activities. The selection criteria for full applications are similar to those we used to evaluate applications in 1999 for the initial competition under the program. They focus on quality of project design, significance of project activities, quality of resources, and the quality of the management plan and workplan.

As required by section 205(b)(2)(B) of the statute, § 611.25 would establish a competitive preference for Partnership Program applications that involve businesses. Under this section, the Secretary would award up to ten additional points on the basis of how well the application includes a significant role for private business in the design and implementation of the project.

Selection Criteria for the Teacher Recruitment Program

Sections 611.31 and 611.32 would establish the selection criteria for the pre-application and the full application, respectively. The selection criteria for pre-applications would address the same general areas as those for Partnership Program pre-applications, but would be tailored to matters related to teacher recruitment. Similarly, the selection criteria to govern full applications submitted under the Teacher Recruitment Program would address the same general areas as those for the State Program, but would be tailored to matters related to teacher recruitment.

Other Program Requirements

Section 611.61 would limit the indirect costs that a recipient may charge to Teacher Quality Program funds to the maximum of either eight percent or the amount determined through operation of a negotiated indirect cost rate. We are proposing this regulation so that the indirect cost limitation is applicable to all recipients of program funds. By regulation published in the **Federal Register** on August 6, 1999 (64 FR 42837), this limitation (formerly established in § 611.41) already applies to States and LEAs. Regulations published in the **Federal Register** on February 8, 1999 (64 FR 6189) applied this same indirect cost limitation to IHEs and nonprofit organizations that receive program funds on the basis of the initial Teacher Quality Program grant competitions. However, through an oversight, the Department had not previously proposed to apply this limitation on indirect costs to IHEs and nonprofit agencies and that receive program funds under the second and succeeding grant competitions.

We recognize the legitimacy of a grant recipient's indirect costs. However, for reasons presented in the May 19, 1999 NPRM that proposed this indirect cost limitation for States and LEAs (64 FR 27403), we believe that having IHEs and nonprofit organizations apply large, generally applicable negotiated indirect cost rates to compensate themselves out of program funds for general overhead and related expenses is inconsistent with the purpose of the Teacher Quality Programs and the expectations that Congress and the Nation have for their success. Therefore, given (1) the privotal significance of the Teacher Quality Programs, (2) the national need that these programs have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that these programs are competitive, the Secretary has determined that a reasonable limitation on the indirect cost rate that IHEs and nonprofit organizations may charge to their Teacher Quality Program funds is appropriate. Section 611.61 would make all recipients of program funds—States, LEAs, IHEs, nonprofit organizations, and other entities—subject to the same limitation on indirect costs they may charge to program funds.

Finally, § 611.62 would detail a grantee's matching requirements. As required by section 205(c)(1) of the statute, each State receiving a grant under either the State Program or the Teacher Recruitment Program would have to provide, from non-Federal sources, an amount equal to 50 percent of the amount of the grant to carry out the activities supported by the grant. Section 611.52(a) would clarify that the 50 percent match would need to be made annually during the project period, with respect to each grant a State receives. In addition, § 611.52(b) repeats the requirement in section 205(c)(2) of the statute that each partnership receiving a grant under the Partnership Program or the Teacher Recruitment Program be required to provide, from non-Federal sources, an amount equal to 25 percent of the grant for the first year of the program, 35 percent of the grant for the second year of the program, and 50 percent of the grant for the third through fifth year of the program.

We interpret these requirements, that grantees provide each year a specified percentage ''of the grant'' from non-federal sources, to mean a specified percentage of the amount of the federal funds the Department annually awards. Therefore, for example, a partnership that is awarded $1 million per year in federal funds would need to provide the project $250,000 from non-federal funds for the first year of project activities. The required match from non-Federal sources required by this section could be made in cash or in kind.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that the Nation's teaching force will

have the content knowledge and teaching skills needed to instruct all American students for the next century.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, *§ 611.21 What are the selection criteria for pre-applications?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are IHEs and LEAs. The information burden on each of these groups consists only of the time and resources needed to submit grant applications. Hence, the regulations would not have a significant impact on any entity because they would not impose excessive regulatory burden or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

Proposed §§ 611.2–611.25 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this notice and these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information

Teacher Quality Enhancement Grant Programs.

Applicants for funds under the State Grants program, the Partnership Program for Improving Teacher Effectiveness, and the Teacher Recruitment Grants Program would need to submit program applications and, for the Partnership Program and Teacher Recruitment Program, pre-applications that respond to the selection criteria announced in this notice. Applicants also would need to include a detailed workplan with their applications.

State Program

We collect information once for applicants for State Program grant awards. We estimate annual reporting and recordkeeping burden for this collection of information to average 200 hours for each application for 20 State respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection on those preparing application under the State Program to be 4,000 hours.

Partnership and Teacher Recruitment Programs

For both the Partnership Program and Teacher Recruitment Program, all applicants must submit a pre-application; those with the highest quality pre-applications would then be invited to submit full applications. We estimate annual reporting and recordkeeping burden for this collection of information to average 54 hours for each of the 150 respondents expected to submit pre-applications under the Partnership Program, and 54 hours for each of the 150 respondents expected to submit pre-applications under the Teacher Recruitment Program. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden related to the preparation of pre-applications to be 8,100 hours for each of the two programs, or a total of 16,200 hours.

We estimate that of those applicants who submitted pre-applications for Partnership Program and Teacher Recruitment Program grant awards, 25 under each program will be invited to submit full program applications. We estimate annual reporting and recordkeeping burden for this collection of information to average 200 hours for each of the applications, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection on those preparing application under the Partnership Program to be 5,000 hours, and under the Teacher Recruitment Program also to be 5,000 hours.

Summary

Finally, as discussed in the preceding discussion, we estimate that the total annual reporting and recordkeeping burden for this collection as it relates to all three Teacher Quality Enhancement Grant Programs to be 30,200 hours. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60

days after publication of this document in the **Federal Register.** Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Requests for copies of the proposed application packages for any or all of the Teacher Quality Programs may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the Internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html. To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of these sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at 1–888–293–6448, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1021 *et seq.* and 1024(e)

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

List of Subjects in 34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

Dated: February 1, 2000.

A. Lee Fritschler,

Assistant Secretary For Postsecondary Education.

For the reasons stated in the preamble, the Secretary proposes to amend part 611 of Chapter VI of title 34 of the Code of Federal Regulations as follows:

PART 611—[AMENDED]

1. The authority citation for part 611 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.,* unless otherwise noted.

2. Sections 611.2 and 611.3 are added to Subpart A to read as follows:

§ 611.2 What must be included in a Partnership or Teacher Recruitment Program pre-application?

(a) In addition to a description of the proposed multiyear project, timeline, and budget information required by 34 CFR 75.112 and 75.117 and other applicable law, an applicant for a grant under this part must submit with its application a proposed multiyear workplan. At a minimum, this workplan must identify, for each year at the project—

(1) The project's overall objectives;

(2) Activities that the applicant proposes to implement to promote each project objective;

(3) Benchmarks and timelines for conducting project activities and achieving the project's objectives;

(4) Who will conduct and coordinate these activities; and

(5) Measurable program outcomes that are tied to each program objective, and the evidence by which success in achieving these objectives will be measured;

(b)(1) In any application for a grant under the Partnership Program, or under the Teacher Recruitment Program that is submitted on behalf of a partnership, the workplan must identify which partner will be responsible for which activities.

(2) In any application for a grant under the Teacher Recruitment Program that is submitted on behalf of a State, the workplan must identify which entity in the State will be responsible for which activities.

(c) An applicant that submits a pre-application for a Partnership Program grant under § 611.3(b) (3) must also submit any budgetary information that the Secretary may require in the program application package.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.3 What procedures does the Secretary use to award a grant?

The Secretary uses the selection procedures in 34 CFR 75.200 through 75.222 except that—

(a)(1) For the State Grants Program, the Secretary evaluates applications for new grants on the basis of the selection criteria and competitive preference contained in §§ 611.11 through 611.13.

(2) For the Partnership Grants Program, the Secretary—

(i) Uses a two-stage application process to determine which applications to fund;

(ii) Uses the selection criteria in §§ 611.21 through 611.22 to evaluate the pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(iii) For those applicants invited to submit full applications, uses the selection criteria and competitive preference in §§ 611.23 through 611.25 to evaluate the full program applications.

(3) For the Teacher Recruitment Grants Program, the Secretary—

(i) Uses a two-stage application process to determine which applications to fund;

(ii) Uses the selection criteria in §§ 611.31 to evaluate the pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(iii) For those applicants invited to submit full applications, uses the selection criteria in §§ 611.32 to evaluate the full program applications; and

(b) In the event that two or more applicants are ranked equally for the last available award under any program, the Secretary selects the applicant whose activities will focus (or have most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

(Authority: 20 U.S.C. 1021 *et seq.*)

3. Subpart B, consisting of §§ 611.11 through 611.13, is added, reading as follows:

Subpart B—State Grants Program

§ 611.11 What are the program's general selection criteria?

In evaluating the quality of applications, the Secretary uses the following selection criteria.

(a) *Quality of project design.* (1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the extent to which—

(i) The project design will result in systemic change in the way that all new teachers are prepared, and includes partners from all levels of the education system;

(ii) The Governor and other relevant execution and legislative branch officials, the K–16 education system or systems, and the business community are directly involved in and committed to supporting the proposed activities;

(iii) Project goals and performance objectives are clear, measurable outcomes are specified, and a feasible plan is presented for meeting them;

(iv) The project is likely to initiate or enhance and supplement systemic State reforms in one or more of the following areas; teacher recruitment, preparation, licensing, and certification;

(v) The applicant will ensure that a diversity of perspectives are incorporated into operation of the project, including those of parents, teachers, employers, academic and professional groups, and other appropriate entities; and

(vi) The project design in based on up-to-date knowledge from research and effective practice.

(b) *Significance.* (1) The Secretary considers the significane of the project.

(2) In determining the significance of the project, the Secretary considers the extent to which—

(i) The project involves the development or demonstration of promising new strategies or exceptional approaches in the way new teachers are recruited, prepared, certified, or licensed;

(ii) Project outcomes lead directly to improvements in teaching quality and student achievement as measured against rigorous academic standards;

(iii) The State is committed to institutionalize the project after federal funding ends; and

(iv) Project strategies, methods, and accomplishments are replicable, thereby permitting other States to benefit from them.

(c) *Quality of resources.* (i) The Secretary considers the quality of the project's resources.

(2) In determining the quality of the project design, the Secretary considers the extent to which—

(i) Support available to the project, including personnel, equipment, supplies, and other resources, is sufficient to ensure a successful project;

(ii) Budgeted costs that are reasonable and justified in relation to the design, outcomes, and potential significance of the project; and

(iii) The applicant's matching share of the budgeted costs demonstrates a significant commitment to successful completion of the project and to project continuation after federal funding ends.

(d) *Quality of management plan and workplan.* (1) The Secretary considers the quality of the project's management plan and workplan.

(2) In determining the quality of the management plan and workplan, the Secretary considers the following factors:

(i) The extent to which the management plan and workplan are designed to achieve goals and objectives of the project, and include clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The adequacy of procedures to ensure feedback and continuous improvements in the operation of the project.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.12 What additional selection criteria are used for an application proposing teacher recruitment activities?

In reviewing applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.11(a) (''Quality of project design''), the Secretary considers the extent to which the project addresses—

(1) Systemic changes in the ways that new teachers are to be recruited, supported and prepared; and

(2) Systemic efforts to recruit, support, and prepare prospective teachers from disadvantaged and other underrepresented backgrounds.

(b) In addition to the elements contained in § 611.11(b), (''Significance''), the Secretary considers the applicant's commitment to continue recruitment activities, scholarship assistance, and preparation and support of additional cohorts of new teachers after funding under this part ends.

(c) In addition to the elements contained in § 611.11(c) (''Quality of resources''), the Secretary considers the impact of the project on high-need LEAs and high-need schools based upon—

(1) The amount of scholarship assistance the project will provide students from federal and non-federal funds;

(2) The number of students who will receive scholarships; and

(3) How those students receiving scholarships will benefit from high-quality teacher preparation and an effective support system during their first three years of teaching.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.13 What competitive preference does the Secretary provide?

The Secretary provides a competitive preference on the basis of how well the State's proposed activities in any one or more of the following statutory priorities are likely to yield successful and sustained results:

(a) Initiatives to reform State teacher licensure and certification requirements so that current and future teachers possess strong teaching skills and academic content knowledge in the subject areas they will be certified or licensed to teach.

(b) Innovative reforms to hold higher education institutions with teacher preparation programs accountable for preparing teachers who are highly competent in the academic content areas and have strong teaching skills.

(c) Innovative efforts to reduce the shortage (including the high turnover) of highly competent teachers in high-poverty urban and rural areas.

(Authority: 20 U.S.C. 1021 *et seq.*)

4. Subpart C, consisting of §§ 611.21 through 611.25, is added, reading as follows:

Subpart C—Partnership Grants Program

§ 611.21 What are the program's selection criteria for pre-applications?

In evaluating the quality of pre-applications, the Secretary uses the following selection criteria.

(a) *Project goals and objectives.* (1) The Secretary considers the goals and objectives of the project design.

(2) In determining the quality of the project goals and objectives, the Secretary considers the following factors:

(i) The partnership's vision for producing significant and sustainable improvements in teacher education.

(ii) The needs the partnership will address.

(iii) How the partnership and its activities would be sustained once federal support ends.

(b) *Partnering commitment.* (1) The Secretary considers the partnering commitment embodied in the project.

(2) In determining the quality of the partnering commitment, the Secretary considers the following factors:

(i) Evidence of how well the partnership would be able to accomplish objectives working together that its individual members could not accomplish working separately.

(ii) The significance of the roles given to each principal partner in implementing project activities.

(c) *Quality and comprehensiveness of key project components.* (1) The Secretary considers the quality and comprehensiveness of key project components in the process of preparing new teachers.

(2) In determining the quality and comprehensiveness of key project components in the process of preparing new teachers, the Secretary considers the extent to which—

(i) Specific activities are designed and would be implemented to ensure that students preparing to be teachers are adequately prepared, including activities designed to ensure that they have adequate content knowledge, are able to use technology effectively to promote instruction, and participate in extensive, supervised clinical experiences;

(ii) Specific activities are designed and would be implemented to ensure adequate support for those who have completed the teacher preparation program during their first years as teachers; and

(iii) The project design reflects best research and practice.

(d) *Specific project outcomes.* (1) The Secretary considers the specific outcomes the project would produce in the preparation of new teachers.

(2) In determining the specific outcomes the project would produce in the preparation of new teachers, the Secretary considers the following factors:

(i) The extent to which important aspects of the partnership's existing teacher preparation system would change.

(ii) The quality of the performance measures to be used to demonstrate success.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.22 What additional selection criteria are used for a pre-application that proposes teacher recruitment activities?

In reviewing pre-applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.21(a) (''Project goals and objectives''), the Secretary considers the extent to which—

(1) The partnership's vision responds to LEA needs for a diverse and high quality teaching force, and will lead to reduced teacher shortages in these high need LEAs; and

(2) The partnership will sustain its work after federal funding has ended by recruiting, providing scholarship assistance, training and supporting additional cohorts of new teachers.

(b) In addition to the elements contained in § 611.21(c) (''Quality and comprehensiveness of key project components''), the Secretary considers the extent to which the project will—

(1) Significantly improve recruitment of new students, including those from disadvantaged and other underrepresented backgrounds; and

(2) Provide scholarship assistance and adequate training to preservice students, as well as induction support for those who become teachers after graduating from the teacher preparation program.

(c) In addition to the elements contained in § 611.21(d) (''Specific project outcomes''), the Secretary considers the extent to which the project addresses the number of new teachers to be produced and their ability to teach effectively in high-need schools.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.23 What are the program's general selection criteria for full applications?

In evaluating the quality of applications, the Secretary uses the following selection criteria.

(a) *Quality of project design.* (1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent of evidence of institution-wide commitment to high quality teacher preparation that includes significant policy and practice changes supported by key leaders, and which result in permanent changes to ensure that preparing teachers is a central mission of the entire university.

(ii) The extent to which the partnership creates and sustains collaborative mechanisms to integrate professional teaching skills, including skills in the use of technology in the classroom, with strong academic content from the arts and sciences.

(iii) The extent of well-designed and extensive preservice clinical experiences for students, including mentoring and other forms of support, implemented through collaboration between the K–12 and higher education partners.

(iv) Whether a well-planned, systematic induction program is established for new teachers to increase their chances of being successful in high-need schools.

(v) The strength of linkages within the partnership between higher education and high need schools or school districts so that all partners have important roles in project design, implementation, governance and evaluation.

(vi) Whether the project design is based on up-to-date knowledge from research and effective practice, especially on how students learn.

(b) *Significance of project activities.* (1) The Secretary considers the significance of project activities.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) How well the project involves promising new strategies or exceptional approaches in the way new teachers are recruited, prepared and inducted into the teaching profession.

(ii) The extent to which project outcomes include preparing teachers to teach to their State's highest K–12 standards and that are likely to result in improved K–12 student achievement.

(iii) The extent of the partnership's commitment to institutionalize the project after federal funding ends.

(iv) The extent to which the partnership is committed to disseminating effective practices to others and is willing to provide technical assistance about ways to improve teacher education.

(v) How well the partnership will integrate its activities with other education reform efforts underway in the State or communities where the partners are located, and will coordinate its work with local, State or federal teacher training, teacher recruitment, or professional development programs.

(c) *Quality of resources.* (1) The Secretary considers the quality of resources of project activities.

(2) In determining the quality of resources, the Secretary considers the extent to which—

(i) Support available to the project, including personnel, equipment, supplies, and other resources, is sufficient to ensure a successful project;

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project; and

(iii) The applicant's matching share of the budgeted costs demonstrates a significant commitment to successful completion of the project and to project continuation after federal funding ends.

(d) *Quality of management plan and workplan.* (1) The Secretary considers the quality of the management plan and workplan.

(2) In determining the quality of the management plan, the Secretary considers the following factors:

(i) The extent to which the management plan and workplan are designed to achieve goals and objectives of the project, and include clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The extent to which the management plan and workplan reflect an effective, inclusive, and responsive governance and decision-making structure that will permit all partners to participate in and benefit from project activities, and to use evaluation results to ensure continuous improvements in the operations of the project.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.24 What additional selection criteria are used for a full application that proposes teacher recruitment activities?

In reviewing full applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.23(a) (''Quality of project design''), the Secretary considers the extent to which the project reflects—

(1) A commitment to recruit, support and prepare additional well-qualified new teachers for high need schools;

(2) Appropriate academic and student support services; and

(3) A well-considered strategy for addressing shortages of well-qualified and well-trained teachers in high-need LEAs, especially teachers from disadvantaged and other unrepresented backgrounds.

(b) In addition to the elements contained in § 611.23(b) (''Significance of project activities''), the Secretary considers the extent to which the project promotes the recruitment, scholarship assistance, preparation, and support of additional cohorts of new teachers.

(c) In addition to the elements contained in § 611.23(c) (''Quality of resources''), the Secretary considers the impact of the project on high-need LEAs and high-need schools based upon—

(1) The amount of scholarship assistance the project will provide students from federal and non-federal funds;

(2) The number of students who will receive scholarships; and

(3) How those students receiving scholarships will benefit from high-quality teacher preparation and an effective support system during their first three years of teaching.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.25 What competitive preference does the Secretary provide?

The Secretary provides a competitive preference on the basis of how well the project includes a significant role for private business in the design and implementation of the project.

(Authority: 20 U.S.C. 1021 *et seq.*)

5. Subpart D, consisting of §§ 611.31 and 611.32, is added, reading as follows:

Subpart D—Teacher Recruitment Grants Program

§ 611.31 What are the program's selection criteria for pre-applications?

In evaluating pre-applications, the Secretary considers the following criteria:

(a) *Project goals and objectives.* (1) The Secretary considers the goals and objectives of the project design.

(2) In determining the quality of the project goals and objectives, the Secretary considers how the partnership or State applicant intends to—

(i) Produce significant and sustainable improvements in teacher recruitment, preparation, and support.

(ii) Reduce teacher shortages in high-need LEAs and schools, and improve student achievement in the schools in which teachers who participate in its project will teach.

(b) *Partnership commitment.* (1) The Secretary considers the partnering commitment embodied in the project.

(2) In determining the quality of the partnering commitment, the Secretary considers the following factors:

(i) What the partnership, or State and its partners, can accomplish by working together that could not be achieved by working separately.

(ii) How the project proposed by the partnership or State is driven by the needs of LEA partners.

(c) *Quality of key project components.* (1) The Secretary considers the quality of key project components.

(2) In determining the quality of key project components, the Secretary considers the following factors:

(i) The extent to which the project would make significant and lasting systemic changes in how the applicant recruits, trains, and supports new teachers, and reflect knowledge gained from research and practice.

(ii) The extent to which the project would be implemented in ways that significantly improve recruitment, scholarship assistance to preservice students, training, and induction support for new entrants into teaching.

(d) *Specific project outcomes.* (1) The Secretary considers the specific outcomes the project would produce in the recruitment, preparation, and placement of new teachers.

(2) In determining the specific outcomes the project would produce in the recruitment, preparation, and placement of new teachers, the Secretary considers the following factors:

(i) The number of teachers to be produced and the quality of their preparation.

(ii) The partnership's or State's commitment to sustaining the work of the project after federal funding has ended by recruiting, providing scholarship assistance, training, and supporting additional cohorts of new teachers.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.32 What are the program's general section criteria?

In evaluating the quality of full applications, the Secretary uses the following selection criteria.

(a) *Quality of the project design.* (1) The Secretary considers the quality of the project design for ensuring that activities to recruit and prepare new teachers are a central mission of the project.

(2) In considering the quality of the project design for ensuring that activities to recruit and prepare new teachers are a central mission of the project, the Secretary considers the extent to which the project design—

(i) Shows evidence of institutional or (in the case of a State applicant) State-level commitment both to recruitment of additional new teachers, and to high-quality teacher preparation that includes significant policy and practice changes supported by key leaders that result in permanent changes to current institutional practices;

(ii) Creates and sustains collaborative mechanisms to integrate professional

teaching skills, including skills in the use of technology in the classroom, with academic content provided by the school of arts and sciences;

(iii) Includes well-designed academic and student support services as well as carefully planned and extensive preservice clinical experiences for students, including mentoring and other forms of support, that are implemented through collaboration between the K–12 and higher education partners;

(iv) Includes establishment of a well-planned, systematic induction program for new teachers that increases their chances of being successful in high-need schools;

(v) Includes strong linkages among the partner institutions of higher education and high-need schools and school districts (or, in the case of a State applicant, between the State and these entities in its project), so that all those who would implement the project have important roles in project design, implementation, governance, and evaluation;

(vi) Responds to the shortages of well-qualified and well-trained teachers in high-need school districts, especially from disadvantaged and other underrepresented backgrounds; and

(vii) Is based on up-to-date knowledge from research and effective practice.

(b) *Significance.* (1) The Secretary considers the significance of the project.

(2) In determining the significance of the project, the Secretary considers the extent to which—

(i) The project involves promising new strategies or exceptional approaches in the way new teachers are recruited, prepared, and inducted into the teaching profession;

(ii) Project outcomes include measurable improvements in teacher quality and in the number of well-prepared new teachers, and that are likely to result in improved K–12 student achievement;

(iii) The project will be institutionalized after federal funding ends, including recruitment, scholarship assistance, preparation, and support of additional cohorts of new teachers;

(iv) The project will disseminate effective practices to others, and to provide technical assistance about ways to improve teacher recruitment and preparation; and

(v) The project will integrate its activities with other education reform activities underway in the State or communities in which the project is based, and will coordinate its work with local, State, and federal teacher recruitment, training, and professional development programs.

(c) *Quality of resources.* (1) The Secretary considers the quality of the project's resources.

(2) In determining the quality of the project's resources, the Secretary considers the extent to which—

(i) The amount of support available to the project, including personnel, equipment, supplies, student scholarship assistance, and other resources is sufficient to ensure a successful project.

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project.

(iii) The applicant's matching share of budgeted costs demonstrates a significant commitment to successful completion of the project, and to project continuation after federal funding ends.

(d) *Quality of management plan and workplan.* (1) The Secretary considers the quality of the project's management plan and workplan.

(2) In determining the quality of the management plan and workplan, the Secretary considers the following factors:

(i) The extent to which the management plan and workplan are designed to achieve goals and objectives of the project, and include clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The extent to which the project has an effective, inclusive, and responsive governance and decisionmaking structure that will permit all partners to participate in and benefit from project activities, and to use evaluation results to continuously improve project operations.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Authority: 20 U.S.C. 1021 *et seq.*)

6. Subpart F is revised to read as follows:

Subpart F—Other Grant Conditions

§ 611.61 What is the maximum indirect cost rate that applies to a recipient's use of program funds?

Notwithstanding 34 CFR 75.560 through 75.562 and 34 CFR 80.22, the maximum indirect cost rate that any recipient of funds under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.62 What are a grantee's matching requirements?

(a)(1) Each State receiving a grant under the State Grants Program or Teacher Recruitment Grants Program must provide, from non-federal sources, an amount equal to 50 percent of the amount of the grant to carry out the activities supported by the grant

(2) The 50 percent match required by paragraph (a)(1) of this section must be made annually during the project period, with respect to each grant award the State receives.

(b) Each partnership receiving a grant under the Partnership Grant Program or the Teacher Recruitment Grant Program must provide, from non-federal sources, an amount equal to—

(1) 25 percent of the grant award for the first year of the grant;

(2) 35 percent of the grant award for the second year of the grant; and

(3) 50 percent of the grant award for each succeeding year of the grant.

(c) The match from non-federal sources required by paragraphs (a) and (b) of this section may be made in cash or in kind.

(Authority: 20 U.S.C. 1021 *et seq.*)

[FR Doc. 00–2722 Filed 2–10–00; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–2]

Cable Compulsory License; Definition of a Network Station

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is opening a rulemaking proceeding to determine the scope and application of the definition of a network station under the cable statutory license of the Copyright Act.

DATES: Initial comments should be received no later than April 11, 2000. Reply comments are due by May 11, 2000.

ADDRESSES: If sent by mail, an original and twelve copies of comments and reply comments should be addressed to: Office of the Copyright General Counsel, PO Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and twelve copies of comments and reply comments should be brought to: Office of the

Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

When is a television station a network station? That is the question for which Paxson Communications Corp. (''Paxson'') has petitioned the Copyright Office for an answer and to which this rulemaking proceeding is directed.

The cable statutory license of the Copyright Act, 17 U.S.C. 111, provides a licensing regime for the retransmission of broadcast stations by cable systems. Whether a particular station is a ''network'' station or not is critical to the calculation of royalty payments by cable systems for retransmission of that station because the cable statutory license only gathers royalties for the retransmission of nonnetwork broadcast programming. In applying the royalty payment formula, cable systems pay a full distant signal equivalent (''DSE'') for retransmission of an independent, nonnetwork station because it is presumed that all the programming contained on the signal of that station is not network-provided programming. However, cable systems must only pay one-quarter of a DSE for retransmission of a network station, because it is presumed that only one-quarter of the programming contained on the signal of a network station is nonnetwork programming. Consequently, as a general principle, a cable system can carry four network stations for the cost of one independent station.[1] This distinction in the classification of stations is important to both cable systems and copyright owners: cable systems, because it affects their costs; and copyright owners because it determines how much money will be in the cable royalty pool.

Whether a station is a ''network station'' also affects matters related to cable carriage. Most cable systems throughout the United States have filled their quotas of permitted distant signals. If a new independent station seeks carriage on a typical cable system, such carriage will trigger the 3.75% royalty fee for nonpermitted distant signals which cable systems are reluctant to pay. Consequently, the signal will not be carried. However, if the station is designated as a network station, carriage of the station becomes considerably more attractive to a cable system because the associated royalty fees are considerably lower.

The issue of what is a network station has arisen intermittently through the years on an informal basis. When the Copyright Act passed in 1976, it was clear that the only stations that qualified as network stations under the section 111 license were those owned and operated, or affiliated with, the ''Big 3'' networks: ABC, CBS, and NBC. The Copyright Office received several informal inquiries from cable systems during the early 1990's regarding the status of the Fox network, but the Office declined to rule that Fox was a network for purposes of the section 111 license. Paxson is the first broadcaster to come forward and formally petition the Office for a ruling.

Definition of a Network Station

Section 111(f) of title 17 contains the statutory definition of a network station. It provides:

> A ''network station'' is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

17 U.S.C. 111(f).

Examination of this definition reveals that there are three critical elements to the qualification of a broadcast station as a network station. The broadcast station must be owned and operated by, or affiliated with, one or more of the U.S. television networks that provide nationwide transmissions; must transmit a substantial portion of the programming supplied by the network; and the programming supplied by the network must constitute a substantial portion of the station's typical broadcast day. There has never been any question that stations of the Big 3 networks satisfy these requirements, and the Copyright Office has always treated a station of one of these networks as a network station for purposes of section 111.

Nevertheless, the specific meaning of these three elements is far from clear. For example, what are ''nationwide'' transmissions? Does there have to be a station of a particular ''network'' in every state or television market in order to qualify that organization as a network, or is something less than that sufficient? What constitutes transmitting a ''substantial'' portion of the programming offered by a network? Is fifty percent enough, or is more or less required? Does the programming supplied by the network have to be first-run or original programming, or is syndicated programming permissible? What constitutes a ''substantial'' portion of a station's typical broadcast day? It is these questions, and the ones described below, to which the Copyright Office seeks public comment in this Notice of Inquiry.

Petition of Paxson

Paxson provides television programming over the PaxTV Television Network (''PaxTV'') to over sixty owned and operated and affiliated television broadcast stations. According to Paxson, its owned and operated and affiliate stations satisfy all three of the criteria for a ''network station'' under section 111.

First, Paxson submits that PaxTV is a television network because it provides nationwide transmissions of PaxTV programming. PaxTV is carried on stations in 34 states and the District of Columbia, all of which are either owned and operated by, or are primary affiliates of, PaxTV.

Second, Paxson asserts that its stations carry a substantial portion of the programming provided by PaxTV because its contracts with these stations require that PaxTV programming be broadcast a minimum of 18 hours daily. And third, as a result of this requirement, Paxson submits that each of its stations meets the requirement of transmitting PaxTV programming for a ''substantial part'' of each station's ''typical broadcast day.''

In addition to meeting the three criteria, Paxson notes that the Copyright Office has previously stated that, in addition to the Big 3, there could be a fourth network for purposes of the section 111 license provided that the statutory criteria were met. Letter from Dorothy Schrader, General Counsel, to Thomas Hendrickson (November 13, 1981). Paxson also cites a passage from the 1976 House report accompanying the Copyright Act as further proof that networks in addition to the Big 3 were contemplated under section 111:

> To qualify as a network station, all of the conditions of the definition must be met. Thus, the retransmission of a Canadian station affiliated with a Canadian network would not qualify under the definition. Further, a station affiliated with a regional network would not qualify, since a regional network would not provide nationwide transmissions. However, a station affiliated with a network providing nationwide

[1] The actual cost of such carriage can vary depending upon the royalty rate applicable to carriage of each station.

transmissions that also occasionally carries regional programs would qualify as a ''network station,'' if the station transmits a substantial part of the programming supplied by the network for a substantial part of the station's typical broadcast day.

H.R. Rep. No. 94–1476, at 101 (1976).

In conclusion, Paxson requests that the Copyright Office declare that stations owned and operated by, or affiliated with, PaxTV be declared network stations under section 111, and that cable systems carrying PaxTV stations be permitted to report and pay for such stations as network stations.

This Proceeding

Since the implementation of the section 111 license in 1978, the Copyright Office has treated a broadcast station that is owned and operated by, or affiliated solely with, one of the Big 3 networks as a ''network station'' for section 111 purposes. All other stations have been treated as independents, including those that have dual affiliations with broadcasters other than the Big 3.[2] As a matter of policy, the Office has never questioned the network status of a broadcast station identified as a CBS, ABC, or NBC station. It has always been assumed that such a station automatically took a substantial portion of the network's programming and that that programming made up a substantial portion of the station's typical broadcast day. There could be cases, however, where such a station does not take a sufficient amount of network programming. The Office has never inquired and has accepted the delineation of network station at face value for stations in the CBS, ABC, and NBC networks. It appears now that with the changing television marketplace, and with the petition of Paxson, the Office must reevaluate its approach before it can declare whether there are any new networks and network stations.

To that end, the Office is opening this rulemaking proceeding to consider what makes a broadcast station a ''network station'' for purposes of section 111. As noted above, there are considerable questions related to the three criteria of the definitional provision which require resolution before the Office can determine whether there are more or less network stations under section 111. The first criterion of the definition focuses on the status of the television network, as opposed to that of the individual station. In order for there to be a television network, there must be nationwide transmissions by stations associated with that network. What is the meaning of ''nationwide'? Does it mean coverage in a certain number of television markets, or is it solely a geographical matter? For example, would coverage of the top twenty television markets constitute ''nationwide'' transmissions because cities on both coasts and a portion of the interior of the United States are covered? Or does ''nationwide'' mean greater, or perhaps even less, coverage? Does the section 119 definition of a network station, which provides that the network must offer an interconnected program service with at least 15 hours per week of network programming to at least 25 stations in 10 or more states, offer any guidance, and, if so, on what grounds?

The second and third criteria refer to the individual station and both contain the word ''substantial.'' The second criterion states that the broadcast station must transmit a substantial part of programming supplied by the network. The obvious question is, what is a ''substantial'' amount? Is it 50 percent, or something more or perhaps even less? The definition of a ''full network station'' in the Federal Communications Commission's 1976 cable rules provides that a full network must transmit 85 percent of the weekly prime time hours offered by the network. 47 CFR 76.5. Does this provision offer any guidance, and, if so, on what grounds?

The third criterion provides that the amount of network programming taken by the station must constitute a ''substantial'' portion of the station's typical broadcast day. Once again, what does ''substantial'' mean? Can some percentage or number of hours be determined to provide a bright-line test as to what is substantial and what is not? Furthermore, can a station which carries all or most of the prime time programming offered by a network satisfy the ''substantial'' requirement, regardless of what it carries at other hours of the day?

If, after reviewing the responses to these questions, the Copyright Office is able to fashion a test for determining when a particular station is a network station, how should such a test be implemented? Can the Office continue to assume that a station that is solely affiliated with, or owned and operated by, one of the Big 3 networks is still a network station for section 111 purposes, or will such stations be required to individually satisfy the new test? If the latter, how should the Office implement the test, and to what extent should broadcasters and cable operators have input as to the determination?

Finally, there is the matter of the Paxson petition, which is the source of this rulemaking proceeding. We do not believe that the question of PaxTV's network status can be reached until a method for determining when a station is a network station is established. Nevertheless, the Paxson petition is useful to creating such a methodology, and PaxTV stations will undoubtably be the first to which the new regulation is applied. The Office has already identified above the number of hours of network programming carried daily by PaxTV stations. The Appendix to this Notice contains a list (provided by Paxson) identifying the stations of the Paxson network, their market location, and Paxson's ownership interest. Commenters are encouraged to use this information in addressing the fundamental issue of when is a television station a network station.

In addition, after rules have been adopted for determining network station status, there is the matter of how the Office should treat other putative broadcast networks, such as the Fox, United Paramount, and Warner Brothers networks? One possible approach is a case-by-case basis whereby each of these networks is afforded the opportunity to petition the Office for a determination of network status, such as Paxson has done. Is this appropriate, or should cable operators who carry such stations be allowed to petition the Office as well? Must each petition be addressed through a notice and comment rulemaking proceeding, or is there some other procedure that is permissible or desirable?

The Office encourages responses to the questions posed in this Notice of Inquiry, as well as any other comments relevant to the issues raised.

Dated: February 4, 2000.

Marybeth Peters,

Register of Copyrights.

Note: This Appendix will not be Codified in Title 37, Part 201, of the Code of Federal Regulations.

The following table lists the owned, operated or affiliated stations airing PAX TV programming.

[2] For example, a station that is affiliated with ABC and Fox would not be considered a network station because the Office has not determined that Fox is a network under section 111.

PAX TV DISTRIBUTION

Rank and market name	Call letters	Station ownership interest
1 New York	WPXN	Owned & Operated.
1 New York	WBPT	Do.
2 Los Angeles	KPXN	Do.
3 Chicago	WCPX	Do.
4 Philadelphia	WPPX	Do.
5 San Francisco-Oakland	KKPX	Do.
6 Boston	WBPX	Affiliated.
6 Boston	WPXB	Owned & Operated.
7 Dallas-Ft.Worth	KPXD	Do.
8 Washington, D.C.	WPXW	Do.
8 Washington, D.C.	WWPX	Affiliated.
9 Detroit	WPXD	Owned & Operated.
10 Atlanta	WPXA	Do.
11 Houston	KPXB	Do.
12 Seattle-Tacoma	KWPX	Do.
13 Cleveland	WVPX	Do.
14 Tampa-St. Petersburg	WXPX	Do.
15 Minneapolis-St. Paul	KPXM	Do.
16 Miami-Ft. Lauderdale	WPXM	Do.
17 Phoenix	KBPX	Do.
17 Phoenix	KPPX	Affiliate—Pending Owned & Operated.
18 Denver	KPXC	Owned & Operated.
20 Sacramento-Stockton-Modesto	KSPX	Pending Owned & Operated.[1]
21 St. Louis	WPXS	Affiliated.
22 Orlando-Daytona Beach	WOPX	Owned & Operated.
23 Portland, OR	KPXG	Do.
25 Indianapolis	WIPX	Affiliated.
27 Hartford & New Haven	WHPX	Do.
29 Raleigh-Durham	WRPX	Do.
29 Raleigh-Durham	WFPX	Owned & Operated.
30 Nashville	WNPX	Do.
32 Cincinnati		
33 Kansas City	KPXE	Do.
36 Salt Lake City	KUPX	TBA—Pending Owned & Operated.[1]
36 Salt Lake City	KUWB	Owned & Operated.
37 Grand Rapids-Kalamazoo	WZPX	Affiliated.
38 San Antonio	KPXL	Pending Owned & Operated.[1]
39 Birmingham-Tuscaloosa	WPXH	Owned & Operated.
40 Norfolk-Portsmouth	WPXV	Do.
41 New Orleans	WPXL	Pending Owned & Operated.[1]
42 Buffalo		
43 Memphis	WPXX	Pending Owned & Operated.
44 West Palm Beach-Ft. Pierce	WPXP	Owned & Operated.
45 Oklahoma City	KOPX	Owned & Operated.[1]
47 Greensboro-H. Point	WGPX	Owned & Operated.
48 Louisville		
49 Albuquerque-Santa Fe	KAPX	Do.
50 Providence-New Bedford	WPXQ	Do.
51 Wilkes-Barre-Scranton	WQPX	Do.
53 Albany-Schenectady-Troy	WYPX	Do.
54 Dayton	WDPX	Do.
55 Fresno-Visalia	KPXF	Do.
57 Little Rock-Pine Bluff	KYPX	Pending Owned & Operated.[1]
58 Charleston-Huntington	WLPX	Owned & Operated.
59 Tulsa	KTPX	Do.
62 Mobile-Pensacola		
63 Knoxville	WPXK	Do.
67 Lexington		
68 Roanoke-Lynchburg	WPXR	Do.
69 Green Bay-Appleton	WPXG	Do.
70 Des Moines-Ames	KFPX	Do.
71 Honolulu	KPXO	Do.
74 Syracuse	WSPX	Do.
75 Shreveport	KPXJ	Do.
82 Champaign & Springfield	WPXU	Do.
88 Cedar Rapids-Waterloo	KPXR	Do.
105 Greenville-N. Bern-Washington	WEPX	Do.
NR San Juan/Ponce/San Sebastian, Puerto Rico	WJPX	Do.

[1] To be acquired.

[FR Doc. 00–3237 Filed 2–10–00; 8:45 am]
BILLING CODE 1410–31–P

POSTAL SERVICE

39 CFR Part 111

Loading Requirements for PVDS Mailings

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (64 FR 72044–45) a proposed revision to the Domestic Mail Manual to require that if Periodicals mail is on the same vehicle as Standard Mail prepared for Plant Verified Drop Shipment (PVDS), then the Periodicals mail must be loaded toward the tail end of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first. The Postal Service is extending the comment period for this proposed rule.

DATES: Comments must be received on or before March 15, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. Fax: (202) 268–4336. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC 20260–1540 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268–6351 or Anne Emmerth, (202) 268–2363.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–3158 Filed 2–10–00; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 445

[FRL 6535–5]

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting.

SUMMARY: EPA will conduct a public meeting on the upcoming Metal Products and Machinery proposed rulemaking on March 3, 2000, from 9:30 a.m. to 12:30 p.m.

The Office of Science and Technology within EPA's Office of Water is holding the public meeting in order to inform all interested parties of the current status of the Metal Products and Machinery (MP&M) effluent guideline. EPA intends to propose effluent limitations guidelines and standards for the MP&M industrial category in October 2000. The meeting is intended to be a forum in which EPA can report on the status of the rulemaking and interested parties can provide information and ideas to the Agency on key technical, economic, and implementation issues.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. For information on the location and directions, see the **ADDRESSES** section below.

DATES: EPA will conduct a public meeting on the upcoming Metal Products and Machinery proposed rulemaking on March 3, 2000, from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The Metal Products and Machinery public meeting will be held at the National Wildlife Visitor Center Auditorium of the Patuxent Research Refuge, 10901 Scarlet Tanager Loop, Laurel, MD (301) 497–5760; ''http://www.prr.r5.fws.gov/vclocation.html''. Directions are as follows: *From Washington, D.C.* take Baltimore-Washington Parkway North (I–295N) to the Powder Mill Road exit. Turn right (East) onto Powder Mill Road. Go 1.9 miles and turn right into Visitor Center entrance (Scarlet Tanager Loop). Go 1.3 miles to parking lot. *From Baltimore* take Baltimore/Washington Parkway South (I–295S) to the Powder Mill Road exit. Turn left (East) onto Powder Mill Road. Go 1.9 miles and turn right into Visitor Center entrance (Scarlet Tanager Loop). Go 1.3 miles to parking lot.

FOR FURTHER INFORMATION CONTACT: Shari Barash, Office of Water (4303), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–7130; email: barash.shari@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is developing proposed effluent limitations guidelines and standards for the MP&M Point Source Category under authority of the Clean Water Act (33 U.S.C. 1251 et. seq.). The MP&M effluent limitations guidelines and standards proposal will apply to facilities that manufacture, rebuild, or maintain finished metal parts, products, or machines. The 18 industrial sectors which are being examined for the MP&M regulation include the following: Aerospace; Aircraft; Bus & Truck; Electronic Equipment; Hardware; Household Equipment; Instruments; Metal Finishing and Electroplating Job Shops; Mobile Industrial Equipment; Motor Vehicles; Office Machines; Ordnance; Precious and Non-precious Metals; Railroad; Ships & Boats; Stationary Industrial Equipment; Printed Circuit Boards; and Other Metal Products. The meeting will provide an update on the development of the proposed rule to interested parties. EPA will provide an overview of the development of the regulation including a discussion of the data collection efforts, the potential treatment technology options, the potential subcategorization of industry segments, and the schedule for the MP&M rulemaking. The meeting will not be recorded by a reporter or transcribed for inclusion in the record for the MP&M rulemaking.

Documents related to the topics mentioned above and a more detailed agenda will be available at the meeting. For those unable to attend the meeting, a document summary will be available following the meeting and can be obtained by an e-mail or telephone request to Shari Barash at the previously mentioned address.

Dated: February 7, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–3215 Filed 2–10–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[DA 00–222; Docket No. 99–81; RM–9328]

Authorization of 2 GHz Mobile Satellite Service Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed Rules: Supplemental Comments.

SUMMARY: By this Public Notice, the Chief of the Federal Communications Commission's International Bureau seeks supplemental comment on authorizing 2 GHz Mobile Satellite Service (MSS) systems using a processing alternative that combines elements of the traditional band arrangement with the negotiated entry approach. This alternative is intended to provide incentives for MSS operators to expedite implementation of their

systems, while maximizing their flexibility during the incumbent relocation process.

DATES: Supplemental Comments on or before February 17, 2000.

ADDRESSES: Send Supplemental Comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554. See Supplementary Information for information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Chris Murphy, Satellite Policy Branch, (202) 418–2373, or Howard Griboff, Satellite Policy Branch, at (202) 418–0657.

SUPPLEMENTARY INFORMATION: In the *2 GHz MSS Notice,* the Commission sought comment on four spectrum assignment methodologies that could accommodate all nine Mobile Satellite Service (MSS) systems proposed in the 1990–2025/2165–2200 MHz frequency bands (2 GHz MSS).[1] The first is a ''flexible band arrangement,'' in which the Commission would grant each proposed system 2.5 MHz in uplink and downlink spectrum, group systems in segments based on the particular technology used, and provide expansion spectrum between the assigned segments for additional system requirements.[2] In the second option, called the ''negotiated entry'' approach, the Commission would license all proposed systems across the entire band and allow the operators themselves to coordinate their operations, with the Commission being available to resolve disputes.[3] In the third proposal, the ''traditional band arrangement,'' the Commission would divide the spectrum equally and assign or designate the spectrum blocks to the proposed systems using system design as a function of spectrum allocation (*i.e.,* a CDMA–NGSO block, a TDMA–GSO block, etc.).[4] The fourth option proposed to auction licenses in the event that none of the preceding three options is viable.[5] The Commission also reserved the option of adopting a hybrid solution arising from the options described.[6]

The Commission received significant comment on the four proposed methodologies. By this Public Notice, the International Bureau seeks to augment the record on certain issues not directly addressed by commenters. Specifically, we seek additional comment on a hybrid processing alternative, combining elements of the traditional band arrangement with the negotiated entry approach. This new alternative is intended to provide incentives for MSS operators to expedite implementation of their systems, while maximizing their flexibility during the incumbent relocation process.[7]

In this alternative methodology, the Commission would subdivide the 2 GHz MSS uplink and downlink bands into distinct segments of equal bandwidth, with each segment representing an operator's ''home'' spectrum assignment in the band. Rather than assigning each segment according to system design, as proposed in the traditional band arrangement, each operator would be permitted to select from the then-available spectrum segments by submitting a request for its desired assignment once the first satellite in its system reaches its intended orbit. This mechanism is designed to provide market-based incentives for MSS operators to implement service quickly, since early entry may determine whether a system can choose its preferred ''home'' segment.

In addition to authorizing each system to a ''home'' spectrum segment, the Commission would authorize each satellite operator to provide service anywhere in the 2 GHz MSS spectrum, subject to inter-system coordination. In this regard, this part of the proposal is similar to the negotiated entry approach proposed in the *2 GHz MSS Notice*. The primary differences, however, are that under the new approach, operators would be permitted to use spectrum outside their ''home'' assignment only on a secondary basis with respect to other MSS operators, and an operator's total spectrum use would be limited to the same amount of spectrum that is authorized in the ''home'' segment. In the event that a later entrant selects spectrum for its ''home'' assignment that is being used by an earlier entrant, the earlier entrant would be required to move to other available spectrum or return to its ''home'' spectrum assignment. This part of the proposal is designed to allow systems to begin providing service in any available frequencies of the 2 GHz MSS band during the incumbent relocation process, and facilitate inter-system coordination in the band when later systems implement.

We seek comment on these modifications to the traditional band arrangement and negotiated entry approach, and on implementing this hybrid spectrum assignment methodology. We also seek comment on whether these modifications would serve the public interest by providing additional incentives for MSS operators to expedite implementation of their systems.

Procedural Matters

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file Supplemental Comments limited to the issues addressed in this Public Notice no later than February 17, 2000. In view of the pendency of this proceeding, we expect to adhere to the schedule set forth in this Public Notice and do not contemplate granting extensions of time. Supplemental Comments should reference IB Docket No. 99–81 and should include the DA number shown on this Public Notice. Supplemental Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[8] Supplemental Comments filed through the ECFS can be sent as an electronic file via Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, IB Docket No. 99–81.

In the *2 GHz MSS Notice,* the Commission presented an Initial Regulatory Flexibility Analysis,[9] as required by the Regulatory Flexibility Act (RFA).[10] If commenters believe that the proposals discussed in this Public Notice require additional RFA analysis, they should include a discussion of these issues in their Supplemental Comments.

For *ex parte* purposes, this proceeding continues to be a ''permit-but-disclose'' proceeding, in accordance with § 1.1200(a) of the Commission's rules, and is subject to the requirements set forth in § 1.1206(b) of the Commission's rules.

[1] *The Establishment of Policies and Service Rules for the Mobile Satellite System in the 2 GHz Band,* IB Docket No. 99–81, Notice of Proposed Rulemaking, 14 FCC Rcd 4843, 4857–64 paras. 26–48 (1999); 64 FR 16880 (April 7, 1999) (*2 GHz MSS Notice*).

[2] *Id.* at 4858–61 paras. 31–39.

[3] *Id.* at 4861–62 paras. 40–43.

[4] *Id.* at 4863 paras. 44–45.

[5] *Id.* at 4863–64 paras. 46–48.

[6] *Id.* at 4858 paras. 30.

[7] *See id.* at 4892 paras. 112–113 (seeking comment on how incumbent relocation may affect the ultimate choice of 2 GHz MSS spectrum assignment methods).

[8] *See Electronic Filing of Documents in Rulemaking Proceeding,* 63 FR 24121 (May 1, 1998).

[9] *2 GHz MSS Notice,* 14 FCC Rcd at 4895–97, Section V.B.

[10] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

For further information, please contact: Chris Murphy, Satellite Policy Branch, (202) 418–2373, or Howard Griboff, Satellite Policy Branch, at (202) 418–0657.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Anna M. Gomez,

Deputy Chief, International Bureau.

[FR Doc. 00–3332 Filed 2–10–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF89

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Ohlone Tiger Beetle (Cicindela ohlone)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the Ohlone tiger beetle (*Cicindela ohlone*). This species is endemic to Santa Cruz County, California, and is threatened by habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of nonnative vegetation, and vulnerability to local extirpations from random natural events. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this species.

DATES: Comments from all interested parties received by April 11, 2000 will be considered. Public hearing requests must be received by March 27, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may submit written comments to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

(2) You may send comments by e-mail to ohlonetigerbeetle@r1.fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN 1018–AF89]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 805/644–1766.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, invertebrate biologist, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Ohlone tiger beetle (*Cicindela ohlone*) is a member of the Coleopteran family Cicindelidae (tiger beetles), which includes over 2,000 species worldwide and over 100 species in the United States (Pearson and Cassola 1992). Tiger beetles are day-active, predatory insects that prey on small arthropods. Because many tiger beetles often feed on insect species that are injurious to man and crops, they are regarded as beneficial (Pearson and Cassola 1992; Nagano 1982). Adult tiger beetles are medium-sized, elongate beetles characterized by their usually brilliant metallic green, blue, red, and yellow coloration highlighted by stripes and spots. Adults are ferocious, swift, and agile predators that seize small prey with powerful sickle-shaped jaws.

Tiger beetle larvae are also predatory. They live in small vertical or slanting burrows from which they lunge and seize passing invertebrate prey (Essig 1926; Essig 1942; Pearson 1988). When a prey item passes near a burrow, the larva grasps the prey with its strong mandibles (mouthparts) and pulls it into the burrow, and once inside the burrow, the larva will feed on the captured prey (Essig 1942; Pearson 1988). Tiger beetles share similar larval body forms throughout the world (Pearson and Cassola 1992). The larvae, either white, yellowish, or dusky in coloration, are grub-like and fossorial (subterranean), with a hook-like appendage on the fifth abdominal segment that anchors the larvae inside their burrows.

Tiger beetle larvae undergo three instars (larval development stages). This period can take 1 to 4 years, but a 2-year period is the most common (Pearson 1988). After mating, the tiger beetle female excavates a hole in the soil and oviposits (lays) a single egg (Pearson 1988; Kaulbars and Freitag 1993; Grey Hayes, University of California, Santa Cruz, pers. comm. 1998). Females of many species of *Cicindela* are extremely specific in choice of soil type for oviposition (egg laying) (Pearson 1988). It is not known at this time how many eggs the Ohlone tiger beetle female lays, but other species of *Cicindela* are known to lay between 1 and 14 eggs per female (mean range 3.7 to 7.7), depending on the species (Kaulbars and Freitag 1993). After the larva emerges from the egg and becomes hardened, it enlarges the chamber that contained the egg into a tunnel (Pearson 1988). Before pupation (transformation process from larva to adult), the third instar larva will plug the burrow entrance and dig a chamber for pupation. After pupation, the adult tiger beetle will dig out of the soil and emerge. Reproduction may either begin soon after emergence or be delayed (Pearson 1988).

Tiger beetles are a well-studied taxonomic group with a large body of scientific literature; the journal *Cicindela* is devoted exclusively to tiger beetles. Scientists have studied the diversity and ecological specialization of tiger beetles, and amateur collectors have long been attracted by their bright coloration and swift movements. Tiger beetle species occur in many different habitats including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988; Knisley and Hill 1992). A common habitat component appears to be open sunny areas for hunting and thermoregulation (an adaptive behavior to use sunlight or shade to regulate body temperature) (Knisley *et al.* 1990; Knisley and Hill 1992). Individual species of tiger beetle are generally highly habitat-specific because of oviposition and larval sensitivity to soil moisture, composition, and temperature (Pearson 1988; Pearson and Cassola 1992; Kaulbars and Freitag 1993).

The Ohlone tiger beetle is endemic to Santa Cruz County, California, where it is known only from coastal terraces supporting remnant patches of native grassland habitat. Specimens of this species were first collected northwest of the City of Santa Cruz, California, in 1987, and were first described in 1993 (Freitag *et al.* 1993). Both male and female specimens have been collected.

The adult Ohlone tiger beetle is a relatively small beetle measuring 9.5 to 12.5 millimeters (mm) (0.37 to 0.49 inches (in)) long. The adults have large, prominent eyes and metallic green elytra (leathery forewings) with small light spots (Freitag *et al.* 1993). Their legs are long, slender, and coppery-green. Freitag *et al.* (1993) describe features that distinguish this species from closely related species of *Cicindela purpurea* and other *purpurea* group taxa.

Two principal distinguishing features of the Ohlone tiger beetle are its early seasonal adult activity period and its disjunct distribution. While other tiger beetle species, such as *Cicindela purpurea*, are active during spring, summer, or early fall (Nagano 1982; Freitag *et al.* 1993), the Ohlone tiger beetle is active from late January to early April (Freitag *et al.* 1993). The Ohlone tiger beetle is the southernmost of *purpurea* group species in the Pacific coast region; its distribution is allopatric (geographically separated) to those of similar species (Freitag *et al.* 1993).

Ohlone tiger beetle larvae are currently undescribed. However, tiger beetle burrows, measuring 4 to 6 mm in diameter (0.16 to 0.23 in), were found in the same habitat areas where adult Ohlone tiger beetles were collected (David Kavanaugh, California Academy of Sciences, pers. comm. 1997; V. Cheap, *in litt.* 1997). The surface openings of these burrows are circular and flat with no dirt piles or mounds surrounding the circumference (Kim Touneh, Service, pers. obs. 1997). These burrows are similar to larval burrows belonging to other tiger beetle species. Larvae and inactive adults have been excavated from these burrows, and the inactive adults collected from these burrows were fully mature and easily identified as Ohlone tiger beetles (D. Kavanaugh, pers. comm. 1997; V. Cheap, *in litt.* 1997). Based on these collections, Kavanaugh (pers. comm. 1997) concluded that the larvae found in these burrows were Ohlone tiger beetle larvae. Further investigations of these recently collected larvae are being conducted to scientifically characterize and document the morphology of the Ohlone tiger beetle larvae (D. Kavanaugh, pers. comm. 1997).

Ohlone tiger beetle habitat is an open native grassland, with California oatgrass (*Danthonia californica*) and purple needlegrass (*Stipa pulchra*), on level or nearly level slopes. The substrate is shallow, pale, poorly drained clay or sandy clay soil that bakes to a hard crust by summer, after winter and spring rains cease (Freitag *et al.* 1993). Ohlone tiger beetle habitat is associated with specific soil types in Santa Cruz County, either Watsonville loam or Bonnydoon soil types. Soil core analyses were conducted for three out of the five known population sites; the soil types for these three sites were determined to be either Watsonville loam or Bonnydoon (Richard Casale and Ken Oster, U.S. Department of Agriculture, Natural Resources Conservation Service, pers. comm. 1997).

Adult Ohlone tiger beetles have been observed in remnant patches of native grassland on coastal terraces where bare areas occur among low or sparse vegetation. Trails (*e.g.,* foot paths, dirt roads, and bicycle paths) are also used. When disturbed, adults will fly to more densely vegetated areas (Freitag *et al.* 1993; Richard Arnold, private consultant, pers. comm. 1995). Oviposition by females and subsequent larval development also occur in this coastal prairie habitat (*i.e.,* open areas among native vegetation) (D. Kavanaugh, pers. comm. 1997; V. Cheap, *in litt.* 1997). The density of larval burrows decreases with increasing vegetation cover (G. Hayes, *in litt.* 1997).

The historic range of the Ohlone tiger beetle cannot be precisely assessed because the species was only recently discovered, and no historic specimens or records are available. The earliest specimen recorded was collected from a site northwest of the City of Santa Cruz in 1987 (Freitag *et al.* 1993). Based on available information on topography, substrates, soils, and vegetation, it is likely that suitable habitat for the Ohlone tiger beetle was more extensive and continuous prior to the increase in urban development and agriculture. Historically, potentially suitable habitat may have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). However, we have no evidence or data indicating that this species occurred beyond the present known occupied areas of Santa Cruz County. Currently, the extent of potentially suitable habitat for the Ohlone tiger beetle is estimated at 81 to 121 hectares (ha) (200 to 300 acres (ac)) in Santa Cruz County, California (Freitag *et al.* 1993).

The available data indicate a restricted range and limited distribution of the Ohlone tiger beetle. This finding is supported by the following considerations. First, many tiger beetle species are known to be restricted to specific habitats (Pearson 1988; Knisley and Hill 1992; Pearson and Cassola 1992), such as the open native grassland occupied by the Ohlone tiger beetle. Second, tiger beetles are widely collected and well studied, yet no historic specimens were found in the extensive collections of the California Academy of Sciences (Freitag *et al.* 1993). The Ohlone tiger beetle's specialized habitat and restricted range may account for the absence of collection records prior to 1987. Because *Cicindela* is a very popular insect genus to collect (Chris Nagano, Service, pers. comm. 1993), and because entomologists commonly collect out of season and out of known ranges in order to find temporally and spatially outlying specimens, one would expect more specimens to have been collected if the Ohlone tiger beetle were more widespread and common.

Only five populations of Ohlone tiger beetles are known to exist. All known populations are located on coastal terraces supporting remnant stands of native grassland. One population occurs northwest of the City of Soquel at 60 to 90 meters (m) (200 to 295 feet (ft)) elevation. A second population is located in the City of Scotts Valley at 210 m (690 ft) elevation; a third is located west of the City of Santa Cruz at 110 m (360 ft) elevation on property owned by the County of Santa Cruz; a fourth population is found in a preserve northwest of the City of Santa Cruz and owned by the City and occurs at about 110 m (360 ft) elevation; and the fifth population is found northwest of the City of Santa Cruz on properties owned by the University of Santa Cruz (University) and the California Department of Parks and Recreation, at about 340 m (1115 ft) elevation (Freitag *et al.* 1993; R. Morgan, *in litt.* 1994; G. Hayes, *in litt.* 1997). The abundance of individuals in each population is unknown. However, each population is localized to areas of less than 2 ha (5 ac) (G. Hayes, pers. comm. 1995).

Researchers conducted two separate surveys to assess the current distribution and status of the Ohlone tiger beetle. Between 1990 and 1994, researchers surveyed 14 sites with native grassland habitat from southwestern San Mateo County to southern Santa Cruz County for Ohlone tiger beetles. Six additional locations supporting nonnative grasslands, but which appeared otherwise suitable, were also surveyed. Surveys were conducted from February to April, when Ohlone tiger beetles are active. This work documented four of the five known populations (R. Morgan, *in litt.* 1994); the preserve population was not known or found during this survey effort.

A second survey effort, conducted during the 1995 activity season, surveyed for populations of Ohlone tiger beetles in coastal grasslands from southern San Mateo County to northern Monterey County. Researchers visited sites repeatedly through the Ohlone tiger beetle's season of activity. These surveys confirmed the four previously known populations and discovered the fifth population at the city-owned preserve (G. Hayes, *in litt.* 1997). All five known populations are located within the urban areas of the City of

Santa Cruz and surrounding communities.

Based on the results of the two survey efforts and the above considerations, we conclude that the Ohlone tiger beetle is restricted to remnant patches of native grassland on coastal terraces in the mid-county portion of coastal Santa Cruz County, California.

Previous Federal Action

On February 18, 1993, we received a petition from Randall Morgan of Soquel, California, requesting that we add the Ohlone tiger beetle to the list of threatened and endangered species pursuant to the Act. The petition contained information indicating that the Ohlone tiger beetle has a limited distribution and specialized habitat requirements and is threatened by proposed development projects and recreational activities. Our 90-day petition finding, published on January 27, 1994, in the **Federal Register** (59 FR 3330), determined that substantial information was presented in the petition indicating that listing may be warranted. Our 12-month petition finding, published on March 1, 1996, in the **Federal Register** (61 FR 8014), concluded a not-warranted determination due to inadequate life history information and survey data to conclusively determine that the beetle is restricted to the described habitat.

On April 30, 1997, we received a second petition from Grey Hayes of Santa Cruz, California, to emergency-list the Ohlone tiger beetle as an endangered species under the Act. The petition specified endangered status because of the beetle's limited distribution and threats from proposed development projects, invasion of nonnative plants, and recreational activities. Based on the information provided by the petitioner and additional information gathered since the first petition in 1993, we determined that emergency-listing the Ohlone tiger beetle was not justified but that listing of this species as endangered is warranted. Therefore, in our most recent Notice of Review, published on October 25, 1999 (64 FR 57534), we included the Ohlone tiger beetle as a candidate species. Candidate species are those species for which listing is warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

The processing of this proposed rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This proposed rule is a Priority 3 action and is being completed in accordance with the current Listing Priority Guidance.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for the Ohlone tiger beetle. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Ohlone tiger beetle (*Cicindela ohlone*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Loss of habitat is the principal threat to insect species worldwide because of their close associations with, and dependence on, specific habitats (Pyle *et al.* 1981). The effects of habitat destruction and modification on tiger beetle species have been documented by Knisley and Hill (1992) and Nagano (1982). The Ohlone tiger beetle is restricted to remnant patches of native grassland on coastal terraces where low and sparse vegetation provide space for foraging, reproduction, and thermoregulation, and support a prey base of other invertebrate species. The poorly drained clay or sandy clay substrate of the coastal terraces provides the soil moisture, composition, and temperature conditions necessary for oviposition and larval development (Pearson 1988; Kaulbars and Freitag 1993).

The five known populations of the Ohlone tiger beetle are threatened by habitat destruction by urban development and/or habitat modification by invasive nonnative vegetation. Disturbance of the substrate and removal or elimination of vegetation by urban development kills or injures individuals and precludes others from feeding, sheltering, or reproducing. Historically, potentially suitable habitat is believed to have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). Most of this habitat has been modified or destroyed by human actions such as urbanization and agriculture (Freitag *et al.* 1993).

About 6,060 to 8,080 ha (15,000 to 20,000 ac) of native grassland remain in Santa Cruz County, and not more than 81 to 121 ha (200 to 300 ac) contain the proper combination of substrate, slope, and exposure (bare areas between patches of grasses) to be considered suitable habitat for the Ohlone tiger beetle (Freitag *et al.* 1993). Nearly all of this suitable habitat is located within or adjacent to urbanized areas in the coastal mid-county area of Santa Cruz. Much of the City of Santa Cruz and its adjacent towns were built on these marine terrace grassland habitats (Freitag *et al.* 1993). Within suitable habitat, the beetle occupies only sparsely vegetated areas and bare areas, which are artifacts of trails or past grazing sites. The total extent of the area occupied by the beetle is estimated to be 10 ha (25 ac) or less.

The Ohlone tiger beetle population northwest of the City of Soquel is threatened by a proposed 21-lot residential development. The preferred alternative of the proposed project would completely extirpate the Ohlone tiger beetle population by eliminating all of the known occupied habitat and most of the extant grassland habitat found on this site. One alternative in the final environmental impact report for the project does propose that the majority of suitable habitat for the Ohlone tiger beetle be set-aside and managed to reduce nonnative vegetation and enhance habitat quality. The county is currently waiting for the applicant to submit design reviews in a supplemental environmental impact

report, which would then be available for public review. When this report will be available for review or whether the alternatives will contain changes that might affect the Ohlone tiger beetle is not known (Kim Tschantz, County of Santa Cruz, pers. comm. 1999).

The population site located in the City of Scotts Valley was proposed for development of 233 residential homes and an open park containing two ballfields. This proposed project would have set aside most of the beetle's occupied habitat by fencing a 30-m (100-ft) wide area between the two ballfields, but construction would still have occurred on adjacent occupied areas and known grassland habitat would have been eliminated. The adjacent development could have led to potential disturbance, such as pesticide drift, soil erosion, and vegetation alteration. In addition, the isolated population would have been more vulnerable to random extinction (see Factor E of this section). A final environmental impact report for this project was completed in the summer of 1998 (Impact Sciences, Inc. 1998). However, this proposed development was voted down in a referendum, thus halting the development of this property for the present time. The landowner is now considering both alternative development plans and the sale of the land. Local agencies and conservation groups are interested in purchasing the land as open space, but funding sources have not been identified. The future plans for the site are not known (Laura Kuhn, City of Scotts Valley, pers. comm. 1999).

A portion of the third population site for the Ohlone tiger beetle, located west of the City of Santa Cruz, was proposed as a residential housing development. The property was originally zoned as part of the Santa Cruz Greenbelt. However, that designation expired in 1994, and the property owners began to consider developing the property. In the spring of 1999, the City of Santa Cruz purchased the property, and it will be managed as open space by the City. The State of California will hold a conservation easement on the land. A management plan will be developed by the City of Santa Cruz, and the Ohlone tiger beetle will be considered in the plan. At the present time, the site is closed to public use except for officially escorted hikes (Susan Harris, City of Santa Cruz, pers. comm. 1999).

The rest of the third population site is still on private land. In September 1998, the property owners tilled up a large percentage of the area the Ohlone tiger beetle occupied, in preparation for converting the land from livestock grazing to a vineyard (G. Hayes, pers. comm. 1998). Whether the species has been completely extirpated from this site is not known.

The fourth population of Ohlone tiger beetles occurs northwest of Santa Cruz on land managed as a preserve by the California Department of Parks and Recreation (CDPR). The CDPR wants to develop their property and has a proposal for the opening of existing trails and the construction of a vehicle entrance road and parking area. The entrance road would be developed over a portion of occupied habitat. The vehicle parking area would be constructed adjacent to the Ohlone tiger beetle's occupied habitat. However, in the public works plan for this site, CDPR established a policy that road maintenance or other activities will be scheduled to minimize impacts on burrows, larval habitat, foraging activities, or other aspects of the population (CDPR 1997).

Property adjacent to the CDPR land is managed by the University of California, Santa Cruz (University), and a population of the beetle is known to occur on this property. Areas that the Ohlone tiger beetle inhabit are designated in the University's Long Range Development Plan for Site-Specific Research, Campus Resource Lands, and Environmental Reserve (University of California 1992). Although some development is possible in site-specific research areas and campus resource lands, no development projects are anticipated at this time (Graham Bice, University of California, pers. comm. 1995; G. Hayes, pers. comm. 1997).

In addition to the development threats to the Ohlone tiger beetle, the invasion of nonnative vegetation threatens the already reduced extent of suitable habitat for this species. Despite being relatively free of development threats, the fifth population site, located northwest of the City of Santa Cruz and owned by the City, is threatened by habitat degradation due to the invasion of nonnative plant species into the coastal prairie. Nonnative vegetation and forest vegetation are encroaching into grassland habitats and out-competing native grassland habitats and out-competing native grassland vegetation (S. Harris, pers. comm. 1998). The City is attempting to maintain the species' habitat by mowing parts of it to provide bare ground, and trails near where the Ohlone tiger beetle occurs will be closed to bicycles (S. Harris, pers. comm. 1999).

The other four populations of Ohlone tiger beetle are also threatened by invasion of nonnative vegetation (*e.g.,* French broom (*Cytisus monspessulanus),* velvet grass (*Holcus* spp.), filaree (*Erodium* spp.), and *Eucalyptus* spp.) (R. Morgan, *in litt.* 1992; G. Hayes, *in litt.* 1997; G. Hayes, pers. comm. 1997). These nonnative plants are aggressive invaders that convert sunny, native grassland needed by Ohlone tiger beetles to habitat dominated by an overstory that shades the bare areas among the low or sparse native vegetation, thus covering the open sunny areas required by the Ohlone tiger beetle to thermoregulate, forage, and oviposit. In addition to shading these areas used by the beetle, the nonnative vegetation fills in the open spaces among the low or sparse vegetation creating an unsuitable densely vegetated habitat. Nonnative vegetation may also affect the numbers and diversity of the beetle's prey, predators, and parasites (see Factor C of this section). Increased vegetation encroachment is the primary factor attributed to the extirpation of several populations of other *Cicindela* species (*e.g., C. abdominalis* and *C. debilis*) (Knisley and Hill 1992). Without management efforts to reduce and control nonnative species, the populations of Ohlone tiger beetle will likely decline because of habitat degradation.

Areas that may once have been suitable for Ohlone tiger beetles have been converted to nonnative grasslands, or have been developed because the firm, level substrate of the coastal terraces afforded good building sites with scenic views of the Pacific Ocean. For the same reasons that other terraces have already been developed, remaining areas of suitable habitat are under great development pressure.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Members of the genus *Cicindela* may be the subject of more intense collecting and study than any other single insect genus. Tiger beetle specimens are highly sought by amateur collectors (C. Nagano, pers. comm. 1993). In light of the recent discovery of the Ohlone tiger beetle, and concerns regarding its continued existence, the desirability of this species to private collectors may increase, leading to increased collection of specimens. The original petitioner for the Ohlone tiger beetle has been contacted by several people from such places as France, Wisconsin, and California, looking for Ohlone tiger beetle specimens they can add to their private collections, as well as those asking where the colonies are located and indicating they want to collect the species at those locations (R. Morgan, pers. comm. 1998). Listing this

species as endangered will likely increase its attractiveness to private collectors. Unrestricted collecting is considered a threat to the species. Although the reproductive rate for the Ohlone tiger beetle is unknown, females of other species of *Cicindela* produce between 3.7 and 7.7 (mean range) eggs (Kaulbers and Freitag 1993). If the Ohlone tiger beetle has a similarly low reproductive rate, even limited collecting could have harmful effects on its reproductive or genetic viability and lead to extinction of the species.

The Ohlone tiger beetle is not likely to be used as a model organism for general research projects because it is a rare and limited species. It may be the subject of studies intended to improve understanding of the species' ecology and to improve management strategies for its conservation. Although such studies would directly benefit the recovery of the Ohlone tiger beetle, they may contribute cumulatively to other threats to the species.

C. *Disease or Predation.* No diseases are known to threaten the Ohlone tiger beetle. However, the Ohlone tiger beetle may be affected by any of several predators and parasites known to prey upon, and afflict, other tiger beetle species. The parasites are considered to have greater effects than predators (Nagano 1982; Pearson 1988). Known tiger beetle predators include birds, shrews (Soricidae), raccoons (Procyon lotor), lizards (Lacertilia), toads (Bufonidae), ants (Formicidae), robber flies (Asilidae) and dragonflies (Anisoptera) (Lavigne 1972; Nagano 1982; Pearson 1988). Known tiger beetle parasites include ant-like wasps of the family Typhiidae, especially the genera Mathoca, Karlissa, and Pterombrus, and the Bombyliid flies of the genus Anthrax (Nagano 1982; Pearson 1988). These insect parasites are distributed worldwide and specialize on tiger beetle larvae.

Predators and parasites play important roles in the natural dynamics of populations and ecosystems. However, the effects of predation and parasitism may pose substantial threats to Ohlone tiger beetle populations already affected by other factors, especially limited distribution and small, isolated populations. At this time, the magnitude of predation and parasitism on the Ohlone tiger beetle is not known.

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not provide adequate protection for the Ohlone tiger beetle and its habitat. Federal agencies are not legally required to consider and manage for species of concern.

At the State and local levels, regulatory mechanisms are also inadequate. The California Endangered Species Act does not allow for the listing of invertebrate species. State and local agencies may consider the Ohlone tiger beetle when evaluating certain activities for compliance with the California Environmental Quality Act (CEQA) and local zoning regulations. If an activity is identified as having a significant impact on this species, mitigation measures may be required by State and local regulatory agencies to offset these impacts. However, CEQA and local regulations do not provide specific protection measures to ensure the continued existence of the Ohlone tiger beetle. In addition, CEQA provisions for ''Statements of Overriding Considerations'' can allow projects to proceed despite unmitigated adverse impacts.

Ohlone tiger beetle habitat occurs on properties owned by the University, the CDPR, and the City of Santa Cruz. The University does not have a management plan that specifically protects the Ohlone tiger beetle or its habitat (G. Hayes, pers. comm. 1997). The CDPR has an existing Public Works Plan that calls for surveys to verify the occupied habitat boundary of the Ohlone tiger beetle and proposes to minimize the impacts of disturbance to the Ohlone tiger beetle during road maintenance and other scheduled activities in the plan (G. Gray, CDPR, pers. comm. 1997). However, a local citizen has expressed concern that surveys and minimization measures are not being adequately carried out (G. Hayes, *in litt.* 1999). For the site northwest of Santa Cruz, the City of Santa Cruz Parks and Recreation Department's Proposed Master Plan for the preserve proposes increased usage of existing trails, but identifies the Ohlone tiger beetle and its habitat as sensitive resources. The proposed master plan includes a management program for Ohlone tiger beetle habitat; however, implementation of any management actions will depend on future funding (S. Harris, per. comm. 1999).

For the site west of the City of Santa Cruz, a management plan will eventually be developed since this property has been purchased as open space. The property is officially closed to public use except for officially escorted hikes. However, the enforcement of this closure may not be adequate.

Because the Ohlone tiger beetle is not listed at the State or Federal levels, nothing prohibits importing, exporting, sale, or trade of the species.

E. *Other natural or manmade factors affecting its continued existence.* The five populations of the Ohlone tiger beetle are isolated and restricted to relatively small patches of habitat. Because a direct correlation exists between increased extinction rates with the reduction of available habitat area and increased distances between small populations (Gilpin 1987), the small, isolated populations of the Ohlone tiger beetle are more vulnerable to local extinction from random genetic and demographic events or environmental catastrophes. The small sizes of occupied habitat also reduce the ability of the habitats to buffer against edge effects and other influences from adjacent developed areas, such as pesticide drift, soil erosion, and vegetation alteration.

Although some species of tiger beetles are known to disperse over sizable distances (Pearson 1988), species from the *purpurea* group of the genus *Cicindela* typically do not disperse widely, usually 12 to 18 m (40 to 60 ft) (David Pearson, Arizona State University, pers. comm. 1997). The dispersal capabilities of Ohlone tiger beetles are unknown; however, because the Ohlone tiger beetle belongs to the *purpurea* group, its dispersal distance is most likely narrow. Assuming individuals to be capable of dispersing distances comparable to those between populations, the likelihood of successful emigration or colonization is greatly reduced by the small size of suitable habitat patches and the unavailability of even marginal habitat among the extensive urban development in the region.

Some recreational uses of Ohlone tiger beetle habitat (i.e., off-road motor vehicle use or heavy bicycling) may pose a threat to the Ohlone tiger beetles. The beetles require open ground to maneuver, take prey, and lay eggs. They use the hard-packed bicycle trails for foraging, thermoregulation, and laying their eggs (R. Morgan, pers. comm. 1998). Bicycle traffic on a trail through the University site has been observed to result in the crushing of several individual beetles (R. Morgan, *in litt.* 1993). Similar mortality has been observed in the species' habitat west of the City of Santa Cruz (R. Morgan, *in litt.* 1993) and may occur in other Ohlone tiger beetle populations. Also, bicycle and foot traffic could potentially collapse larval tunnels and crush the larvae. The significance of such mortality for population viability is not known at this time, but is considered a potential threat to the Ohlone tiger beetle, particularly if bicycle traffic through the habitat increases. Heavy

vehicular traffic in areas with extensive use of public trails, such as on Santa Cruz University, City of Santa Cruz, and CDPR land, may also create soil compaction and rutting, damaging potential oviposition sites. Populations of another tiger beetle species found in the northeastern United States, *Cicindela dorsalis dorsalis,* were extirpated in several localities that were subjected to heavy recreational use (*i.e.,* heavy pedestrian foot traffic and vehicular use) but survived at other sites that had received little or no recreational disturbance (Knisley and Hill 1992).

Pesticides could pose a threat to the Ohlone tiger beetle. The effects of insecticides on other tiger beetle species are referenced by Nagano (1982). Local land owners may use pesticides to control targeted invertebrate species around their homes and gardens. These pesticides may drift aerially or be transported by water runoff into Ohlone tiger beetle habitat where they may kill nontargeted organisms including the Ohlone tiger beetle or its prey species. As urban development increases near or in Ohlone tiger beetle habitat, negative impacts from pesticides may become more frequent. The significance of pesticide effects is not known at this time, but they are recognized as a substantial potential threat to the species.

In making this proposed rule determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Ohlone tiger beetle. Threats to the five populations of Ohlone tiger beetle, including habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of nonnative vegetation, vulnerability to random local extirpations, and potential threats due to collection, pesticides, and recreational use of habitat, imperil the continued existence of this species. Much of the habitat of this species is suitable for development and is unprotected from these threats. The Ohlone tiger beetle is known from only five populations. This species is in danger of extinction ''throughout all or a significant portion of its range'' (section 3(6) of the Act) and, therefore, meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of the Ohlone tiger beetle, the preferred action is to list this species as endangered.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states, that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 1999 and FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for the Ohlone tiger beetle. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for the Ohlone tiger beetle.

Due to the small number of populations, Ohlone tiger beetle is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for Ohlone tiger beetle of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating

critical habitat may also produce some educational or informational benefits. Therefore, we propose that critical habitat is prudent for Ohlone tiger beetle. However, the deferral of the critical habitat designation for Ohlone tiger beetle will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of Ohlone tiger beetle without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for Ohlone tiger beetle. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for Ohlone tiger beetle as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal involvements are not known to exist within the habitat of the Ohlone tiger beetle. If any Federal agency were to fund or issue permits for a project that may affect the Ohlone tiger beetle, that agency would be required to consult with us. Possible nexuses include the Department of Housing and Urban Development and the Department of Commerce's Small Business Administration for funding, and the U.S. Army Corps of Engineers for permits authorized under section 404 of the Clean Water Act.

Listing the Ohlone tiger beetle as endangered will provide for the development of a recovery plan. Such a plan will bring together Federal, State, and local efforts for its conservation. The plan will establish a framework for cooperation and coordination in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also will describe site-specific management actions necessary to achieve the conservation and survival of the Ohlone tiger beetle.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), it is our policy to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

We believe that, based on the best available information, if the Ohlone tiger beetle is listed under the Act, the following actions are not likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of a final regulation adding this taxon to the list of endangered species; and (2) Activities conducted in accordance with reasonable and prudent measures identified by us in a biological opinion issued pursuant to section 7 of the Act, and activities authorized under section 10 of the Act.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Collection of specimens of this taxon for private possession or deposition in an institutional collection;

(2) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) The unauthorized release of biological control agents that attack any life stage of this taxon; and

(4) Noncompliance with the California Department of Parks and Recreation management plans that restrict recreational uses (*i.e.,* biking and foot traffic) of areas designated as occupied habitat by the Ohlone tiger beetle.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

To request copies of the regulations concerning listed wildlife or to inquire about prohibitions of section 9, contact our Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of regulations for issuing permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

Our intent is for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Ventura Fish and Wildlife Office by April 11, 2000. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning threat (or lack thereof) to the Ohlone tiger beetle.

(2) The location of any additional populations of Ohlone tiger beetle and the reasons why any habitat should or should not be determined to be critical habitat for this species pursuant to section 4 of the Act.

(3) Additional information concerning the essential habitat features (biotic and abiotic), range, distribution, population size of this taxon, and information relating to the distributions of genetically distinct individuals within the population.

(4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on Ohlone tiger beetle will take into consideration any comments and any additional information we receive during the comment period, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor of the Service's Ventura, Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered wildlife species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Colleen Sculley, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201—4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
*	*	*	*	*	*	*	
Beetle, Ohlone tiger	*Cicindela ohlone*	U.S.A. (CA)	NA	E	NA	NA	
*	*	*	*	*	*	*	

Dated: January 20, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–3277 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000202022–0022–01; I.D. 012100F]

RIN 0648–AN58

Endangered and Threatened Species: Threatened Status for One Evolutionarily Significant Unit of Steelhead in California

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

ACTION: Proposed rule; request for comments.

SUMMARY: Based on a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations throughout Washington, Oregon, Idaho, and California, NMFS proposed to list 10 Evolutionarily Significant Units (ESUs) as threatened or endangered under the Endangered Species Act (ESA) in 1996. One of these steelhead ESUs, the Northern California ESU, was proposed for listing as a threatened species. Because of scientific disagreements, NMFS deferred its final listing determination for five of these steelhead ESUs, including the Northern California ESU, in August 1997. After soliciting and reviewing additional information to resolve these disagreements, NMFS issued a final determination in March 1998 that the Northern California ESU did not warrant listing under the ESA because available scientific information and conservation measures indicated the ESU was at a lower risk of extinction than at the time of the proposed rule. Because the State of California has failed to implement conservation measures that NMFS considered critically important in its decision not to list the Northern California steelhead ESU, NMFS completed an updated status review and has reconsidered the status of this ESU under the ESA.

Based on this review, NMFS has determined that the Northern California steelhead ESU warrants listing as a threatened species at this time. Accordingly, NMFS is now issuing a proposed rule to list this ESU as threatened under the ESA.

DATES: A public hearing on this proposal will be held on March 15, 2000, from 6:30 p.m.–9:00 p.m. Requests for additional public hearings must be received by March 27, 2000. Comments on this proposal must be received at the appropriate address or fax number (See **ADDRESSES**), no later than 5 p.m. pacific standard time, on April 11, 2000. Comments will not be accepted if submitted via e-mail or Internet.

ADDRESSES: The public hearing will be held at the Eureka Inn, 518 Seventh St., Eureka, California. Comments on this proposed rule and requests for additional public hearings or reference materials should be sent to the Chief, Protected Resources Division, NMFS, Southwest Region, 401 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments may also be sent via facsimile (fax) to 562–980–4027.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, 562–980-4021, or Chris Mobley, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions NMFS has received regarding west coast steelhead is summarized in a final rule and notice of determination for five steelhead ESUs (Lower Columbia River; Central Valley, California; Oregon Coast; Klamath Mountains Province; and Northern California ESUs) that was published on March 19, 1998 (63 FR 13347). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California, and convened a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the U.S. Geological Survey Biological Resources Division (formerly the National Biological Service) to conduct a coast-wide status review for west coast steelhead (Busby *et al.*, 1996).

Based on the results of the BRT's status review, an analysis of Federal, state, and local conservation measures, and other information which NMFS determined constituted the best scientific and commercial data available, NMFS published a proposed listing determination (61 FR 41541, August 9, 1996) that identified 15 ESUs of steelhead in the states of Washington, Oregon, Idaho, and California. Ten of these ESUs, including the Northern California ESU, were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened and endangered under the ESA (62 FR 43937, August 18, 1997). In a separate document published on the same day, NMFS determined substantial scientific disagreement remained for five proposed ESUs, including the Northern California steelhead ESU (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these five steelhead ESUs for 6 months for the purpose of soliciting additional data. During this 6-month period of deferral, NMFS received new scientific information regarding the status of these proposed steelhead ESUs. This new information was evaluated by NMFS' BRT which prepared both an updated status review for these five ESUs [Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead (NMFS, 1997a), and a review of the associated hatchery populations [Memorandum to William Stelle and William Hogarth from Michael Schiewe, January 13, 1998, Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations (NMFS, 1998a).

Based on a review of the updated scientific information for these ESUs, as well as a review and evaluation of Federal, State, and local conservation measures reducing the threats to these ESUs, NMFS issued a final rule (63 FR 13347, March 19, 1998) listing two ESUs as threatened (Lower Columbia River and Central Valley California), and a notice of determination that three ESUs (Oregon Coast, Klamath Mountains Province, and Northern California) did not warrant listing. NMFS' determination that these three ESUs did not warrant listing was based on the best available scientific and commercial data, which indicated these ESUs were at a lower risk of extinction than at the time of the proposed listing determination. Even though the risks confronting these ESUs had been reduced to a point at which listing was not warranted, NMFS still expressed concerns about the status of these three ESUs in the notice of determination,

and therefore, identified them as candidate species which the agency would continue to monitor.

Rationale for Reconsideration of Northern California ESU

NMFS's March 19, 1998 (63 FR 13347), decision not to list the Northern California steelhead ESU was based largely on a determination that sufficient Federal and state conservation measures were in place to reduce threats to the ESU such that the proposed threatened listing was unnecessary. The Federal and state conservation measures upon which NMFS based this determination included: (1) implementation of a March 11, 1998, Memorandum of Agreement (MOA) between NMFS and the State of California (NMFS/California MOA, 1998), with particular importance given to implementation of those provisions in the MOA which were intended to improve non-Federal forest land protections in the ESU (81 percent of land ownership is non-Federal land); (2) implementation of more restrictive in-river harvest regulations by California which were intended to reduce mortality and increase the viability of naturally reproducing steelhead populations; and (3) improved protections to habitat and naturally reproducing steelhead from expanded habitat protection and restoration efforts, improvements in the management of hatchery steelhead stocks, and expanded population monitoring.

At the time of its decision not to list the Northern California ESU, NMFS considered the protection and restoration of freshwater spawning, rearing, and migratory habitat on non-Federal lands to be essential for the long-term survival and recovery of this ESU because non-Federal lands represented such a large portion of the available habitat (81 percent) (63 FR 13347, March 19, 1998). Because of NMFS' concerns regarding the preponderance of private timber lands and timber harvest in the Northern California ESU, the NMFS/California MOA contained several provisions calling for the review and revision of California's forest practice rules (FPRs), and a review of their implementation and enforcement by January 1, 2000. NMFS considered full implementation of these critical provisions within the specified time frame to be essential for achieving properly functioning habitat conditions for steelhead in this ESU.

In accordance with the NMFS/California MOA, a scientific review panel was established by the state to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the State's Board of Forestry with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and CalEPA jointly presented the Board of Forestry with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

Although NMFS' March 19, 1998, decision not to list the Northern California ESU concluded that improvements in steelhead harvest and hatchery management would provide immediate conservation benefits to this ESU, an essential component of the decision was based on NMFS' expectation that changes in the State's FPRs would be implemented by January 1, 2000. Because these critical conservation measures are not being implemented by the State of California and, therefore, are not reducing threats to this ESU that were anticipated at the time of its March 19, 1998, decision not to list the ESU, NMFS determined that a formal reconsideration of the status of this ESU was warranted (December 3, 1999, Memorandum from Rodney R. McInnis and William Stelle, Jr. to Penelope D. Dalton (NMFS, 1999).

Steelhead Life History and Background

Biological information for west coast steelhead (*Oncorhynchus mykiss*) and the Northern California ESU in particular, can be found in steelhead status assessments conducted by NMFS (Busby *et al.*, 1996; NMFS, 1997a; NMFS, 2000) and in previous **Federal Register** documents (61 FR 41541, August 9, 1996; 63 FR 13347, March 19, 1998). A summary of steelhead life history follows.

O. mykiss exhibits one of the most complex suites of life history traits of any salmonid species. Individuals may exhibit anadromy (meaning they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning they reside their entire life in fresh water). Resident forms are usually referred to as ''rainbow'' or ''redband'' trout, while anadromous life forms are termed ''steelhead.'' Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss*, and as a result, the relationship between these two life forms is poorly understood. The scientific name for the biological species that includes both steelhead and rainbow trout has been changed from *Salmo gairdneri* to *O. mykiss*. This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4- or 5-year-olds. Unlike other Pacific salmon, steelhead are iteroparous, meaning they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990; Busby *et al.*, 1996). Depending on water temperature, steelhead eggs may incubate in ''redds'' (nesting gravels) for 1.5 to 4 months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, young juveniles or ''fry'' emerge from the gravel and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as ''smolts.''

Biologically, steelhead can be divided into two reproductive ecotypes, based on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed ''stream maturing'' and ''ocean maturing.'' Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (*i.e.*, summer (stream maturing) and winter steelhead (ocean maturing)). The Northern California ESU contains populations of both winter and summer steelhead.

Two major genetic groups or ''subspecies'' of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins approximately by the Cascade crest (Huzyk & Tsuyuki, 1974; Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck *et al.*,

1986; Reisenbichler *et al.*, 1992). Behnke (1992) proposed classifying the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri*. These genetic groupings apply to both anadromous and nonanadromous forms of *O. mykiss*. Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead. The Northern California steelhead ESU is part of the coastal grouping.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan & Jackson, 1996). In 1999, juvenile *O. mykiss* suspected of being the progeny of steelhead were reported from San Mateo Creek which is in northernmost San Diego County, just north of the Santa Margarita River. Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified by Nehlsen *et al* (1991) as being at moderate or high risk of extinction.

Consideration as a ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of steelhead must be considered ''species'' under the ESA. The ESA defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' NMFS published a policy (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of ''species'' to anadromous salmonid species. This policy provides that a salmonid population will be considered distinct, and hence a species, under the ESA, if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in Waples (1991), a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon,'' which are available upon request (see **ADDRESSES**). The genetic, ecological, and life history characteristics, as well as human-induced genetic changes that NMFS assessed to identify the number and geographic extent of steelhead ESUs on the west coast, including the Northern California steelhead ESU, are discussed in detail in Busby *et al.* (1996) and in the August 9, 1996, proposed listing determination for west coast steelhead (61 FR 41541).

Northern California Steelhead ESU Determination

The Northern California steelhead ESU has been described in previous **Federal Register** documents (61 FR 41541, 62 FR 43937 and 63 FR 13347) based on analyses conducted by NMFS and summarized in the following documents: ''Status Review for West Coast Steelhead from Washington, Idaho, Oregon, and California'' (Busby *et al.*, 1996) and ''Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California'' (NMFS, 1997). The relationship between hatchery steelhead populations and naturally spawned steelhead within this ESU was also assessed in: ''Status Review Update Deferred ESUs of West Coast Steelhead: Hatchery Populations'' (NMFS, 1998a). Copies of these NMFS documents are available upon request (see **ADDRESSES**). NMFS has received no new scientific information indicating that a change in the Northern California ESU definition is warranted.

This Northern California coastal steelhead ESU occupies river basins from Redwood Creek in Humboldt County, CA to the Gualala River, inclusive, in Mendocino County, CA. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures (greater than 20° C) are a factor in some of the larger river basins, but not to the extent that they are in river basins farther south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100–200 cm of rainfall annually (Donley *et al.*, 1979). With the exception of major river basins such as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

The Northern California ESU includes both winter and summer steelhead, including what is presently considered to be the southernmost population of summer steelhead, in the Middle Fork Eel River. Half-pounder juveniles also occur in this geographic area, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer *et al.* (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers which are located in the Klamath Mountains Province ESU, some of the larger rivers in this ESU have migrating steelhead year-round, and seasonal runs have been named. River entry ranges from August through June and spawning from December through April, with peak spawning in January in the larger basins and in late February and March in the smaller coastal basins.

Based on the review of steelhead hatchery programs in this ESU (NMFS, 1998a), NMFS' steelhead BRT concluded that the following steelhead hatchery stocks are part of this ESU because they were established from indigenous natural populations and there is limited impact from the inclusion of out-of-basin fish in the broodstock: Van Arsdale Fisheries Station stock (Eel River), the Yager Creek stock (Eel River tributary), Ten Mile River stock, and North Fork Gualala River stock. The BRT concluded that the Mad River hatchery summer steelhead stock is not part of the ESU based on its origin from out-of-basin steelhead populations combined with the mixing of Eel River summer steelhead in the broodstock. Rearing of this stock was terminated at the Mad River hatchery in 1996. The majority of the BRT concluded that the Mad River hatchery winter steelhead stock is not part of this ESU although a minority of

the BRT was uncertain regarding its relationship to the naturally spawning population. This stock was founded from South Fork Eel River steelhead (within the ESU, but out of the Mad River basin) and some local Mad River steelhead.

Status of Northern California Steelhead ESU

Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. In its previous status reviews for west coast salmon and steelhead, NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

Based on these factors and the best available scientific information, NMFS' BRT first reviewed the status of the Northern California ESU in its original coast-wide status review for steelhead (Busby *et al.*, 1996). The BRT concluded that the Northern California steelhead ESU was likely to become endangered in the foreseeable future. Population abundance was determined to be very low relative to historical estimates (1930's dam counts), and recent trends were downward in stocks for which data were available with the exception of two summer steelhead stocks. Summer steelhead abundance in particular was very low in this ESU. The BRT expressed particular concern regarding sedimentation resulting in part from poor land management practices and channel restructuring due to floods. The abundance of the pikeminnow as a predator in the Eel River was also identified as a significant concern. For the Mad River, in particular, the BRT was concerned about the influence of hatchery stocks both in terms of genetic introgression and the potential for ecological interactions between introduced stocks and native stocks.

The status of the Northern California ESU was reassessed by NMFS' BRT in an updated status review following the 6-month period of deferral because of scientific disagreements (NMFS, 1997a). Based on this updated status review, NMFS' BRT once again concluded that Northern California steelhead ESU was likely to become endangered in the foreseeable future. The BRT reported that there was very limited abundance data available for this ESU, particularly for winter-run steelhead. The most complete data set available in this ESU is a time series of winter steelhead dam counts on the Eel River at Cape Horn Dam. The updated abundance data (through 1997) showed moderately declining long-term and short-term trends in abundance, and the vast majority of these fish were believed to be of hatchery origin. These data show a strong decline in abundance prior to 1970, but no significant trend thereafter. Additional winter steelhead data are available for Sweasy Dam on the Mad River which show a significant decline, but that data set ends in 1963. For the seven populations where recent trend data were available, the only runs showing recent increases in abundance in the ESU were the relatively small populations of summer steelhead in the Mad River which has had high hatchery production, and winter steelhead in Prairie Creek where the increase may be due to increased monitoring or mitigation efforts.

As in its original assessment, the BRT continued to be concerned about the risks associated with interactions between naturally spawning populations and hatchery steelhead in this ESU. Of particular concern to the BRT was the potentially deleterious impact to wild steelhead from past hatchery practices at the Mad River hatchery, primarily from transfers of non-indigenous Mad River hatchery fish to other streams in the ESU and the production of non-indigenous summer steelhead. These potentially deleterious hatchery practices for summer steelhead ended in 1996.

Habitat degradation and other factors were also of concern to the BRT in its reassessment of the long-term risks to this ESU. Specific factors which the BRT identified included dams on the upper Eel and Mad Rivers, the likely existence of minor blockages throughout the ESU, continuing impacts of catastrophic flooding on the 1960s, and reductions in riparian and instream habitat and increased sedimentation from timber harvest activities. The BRT also cited poaching of summer steelhead and predation from pikeminnow in the Eel River as factors for concern. NMFS' supplemental review of factors affecting west coast steelhead also identified water diversion and extraction, agriculture, and mining as factors affecting habitat conditions for steelhead in this ESU (NMFS, 1996).

In conjunction with this reconsideration of the Northern California steelhead ESU, NMFS' Southwest Fisheries Science Center (SWFSC) recently completed another updated status review for this ESU (January 2000 Memorandum from Pete Adams, Southwest Fisheries Science Center (SWFSC) to Rodney R. McInnis, Regional Administrator, Southwest Region (NMFS, 2000)). Based on a review of updated abundance and trend information that was available for this ESU, the SWFSC concluded that the current status of the ESU has not changed significantly since it was last evaluated by NMFS' BRT in December 1997 (NMFS, 1997a). Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is well below estimates in the 1980s and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960's levels.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

NMFS has prepared a report that summarizes the factors leading to the decline of steelhead on the west coast entitled: ''Factors for Decline: A supplement to the notice of determination for west coast steelhead''

(NMFS 1996). This report, available upon request (see **ADDRESSES** section), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast. NMFS (1996) identified several factors that were considered to have contributed to its decline of the Northern California steelhead ESU including: impacts from historic flooding (principally in 1964), predation, water diversions and extraction, minor habitat blockages, poaching, timber harvest, agriculture, and mining. NMFS's steelhead BRT also identified the potentially adverse impacts of the release of non-indigenous hatchery-produced steelhead in this ESU as an important factor, and expressed concerns regarding the lack of reliable abundance and trend data for assessing the status of steelhead in this ESU (NMFS, 1997a). Finally, NMFS was also concerned about the impacts of recreational angling because of the depressed status of steelhead populations and the uncertainty regarding the status of this ESU (March 11, 1998, Memorandum from William Hogarth to Rolland Schmitten (NMFS, 1998e)). The following discussion briefly summarizes findings regarding factors for decline across the range of west coast steelhead, including the Northern California ESU.

The Present or Threatened Destruction, Modification, or Curtailment of Steelhead Habitat or Range

Steelhead on the West Coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes have greatly reduced or eliminated historically accessible habitat. Among other factors, NMFS (1996) specifically identified timber harvest, agriculture, mining, habitat blockages, and water diversions as important factors for the decline of steelhead in the Northern California ESU. NMFS (1998a) discussed these factors in more detail. Studies estimate that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded (Dahl 1990; Tiner 1991). Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91–percent loss of its wetland habitat (Dahl, 1990; Jensen *et al.*, 1990; Barbour *et al.*, 1991; Reynolds *et al.*, 1993). Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58–percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large wood (FEMAT, 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from land use activities is recognized as a primary cause of habitat degradation in the range of west coast steelhead, including the northern California steelhead ESU.

Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Steelhead are not generally targeted in commercial fisheries. High seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades.

Steelhead support an important recreational fishery throughout most of their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flows when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened.

Although harvest of steelhead in the Northern California ESU was not originally identified as a major factor for decline (NMFS 1996), NMFS is concerned about the impacts of recreational angling because of depressed steelhead population levels and the lack of reliable abundance and trend data for accurately assessing the status of individual populations and the ESU as a whole. Because of NMFS' concerns about recreational angling impacts to naturally reproduced steelhead populations in coastal watersheds in California north of the Russian River, the California Department of Fish and Game (DFG) proposed and the California Fish and Game Commission adopted new steelhead angling regulations in 1998 for all watersheds in the Northern California ESU. These new regulations prohibited retention of naturally spawned adult steelhead; eliminated fishing for juvenile steelhead in tributary streams; minimized impacts on juvenile steelhead in mainstem rearing and migratory areas through a combination of gear restrictions and delayed seasonal openings; prohibited retention of summer steelhead during their upstream migration and prohibited fishing in their summer holding areas; and provided for directed harvest and retention of hatchery-produced steelhead which are fully marked statewide. NMFS (1998b,c,d) analyzed these new regulations and concluded that they would substantially reduce fishing effort and reduce mortality to that associated with catch-and-release of naturally produced steelhead in the Northern California ESU. These regulations remain in effect and are enforced by DFG.

Disease or Predation

Infectious disease is one of many factors that can influence adult and juvenile steelhead survival. Steelhead are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environments. Specific diseases such as bacterial kidney disease, ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect steelhead and salmon (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.,* 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for steelhead. However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.,* 1992).

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. In the Northern California steelhead ESU, predation from Sacramento pikeminnow that were released into the Eel River is a major problem. Predation from pikeminnow is discussed in more detail in NMFS (1996). DFG is engaged in an aggressive campaign to control pikeminnow predation in the Eel River. Ongoing efforts to implement improved downstream flow releases from the Potter Valley hydroelectric project in the upper Eel River may assist the State in its efforts to control pikeminnow predation.

Predation by marine mammals is also of concern in some areas experiencing dwindling steelhead run sizes. NMFS (1997b) reviewed the available literature concerning the impacts of California sea lion and Pacific harbor seal predation on west coast anadromous salmonids, and concluded that there was insufficient data in all but one instance (i.e., Ballard Locks in Puget Sound) to conclude that pinnipeds were having a significant impact on wild salmon or steelhead populations. For this reason, and because of the high likelihood that impacts might be occurring, the study concluded that substantial additional research was needed to address this issue further. Based on this research recommendation, NMFS has initiated several field studies in coastal watersheds on the west coast designed to assess the magnitude of pinniped predation on individual salmon or steelhead populations. In California, these studies are being conducted in the lower Klamath River, Scott Creek, and the San Lorenzo River.

Inadequacy of Existing Regulatory Mechanisms

1. Federal Land and Water Management

The Northwest Forest Plan (NFP) is a Federal land management policy with important benefits for west coast steelhead. While the NFP covers a very large area, the overall effectiveness of the NFP in conserving steelhead is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds that comprise individual ESUs. The extent and distribution of Federal lands limits the ability of the NFP to achieve its aquatic habitat restoration objectives at watershed and river basin scales, and highlights the importance of complementary salmon habitat conservation measures on non-federal lands within the subject ESUs.

Federal land ownership and management in the Northern California steelhead ESU is very limited; representing only 19 percent of the total land area. Federal lands (i.e., Redwood National Park, portions of Mendocino National Forest, and the Kings Range National Conservation Area) that do occur in this ESU are also highly fragmented, unlike some other steelhead ESUs (e.g., Klamath Mountains Province and Snake River Basin). Although Federal lands are limited in extent and fragmented in this ESU, NMFS believes that implementation of the NWFP on Mendocino National Forest lands (upper reaches of Eel and Mad Rivers) and implementation of other habitat protections in Redwood National Park (lower reach of Redwood Creek) will provide some limited benefits to steelhead. Nevertheless, long-term habitat protection and the key to achieving properly functioning habitat conditions in this ESU continues to be improvement in non-Federal land management, particularly those lands used for timber harvest.

Because listed coho salmon occur on Federal lands in the Northern California steelhead ESU, NMFS routinely engages the U.S. Forest Service, Bureau of Land Management, and Redwood Creek National Park in ESA section 7 consultations to ensure that ongoing or proposed activities do not jeopardize coho salmon or adversely modify its critical habitat. Through this section 7 consultation process, NMFS ensures that the NFP and other protective measures are fully implemented on Federal lands that occur in this ESU. These measures are also expected to benefit steelhead.

The Pacific Gas and Electric Company's (PG&E) Potter Valley hydroelectric project is a major diverter of water from the mainstem Eel River, which is located in the Northern California ESU. This water is diverted into the Russian River basin to generate hydroelectric power and provide water for agriculture and urban uses. Pursuant to a Federal Energy Regulatory Commission (FERC) licensing requirement, PG&E implemented a 10-year monitoring program in the Eel River for the purpose of developing recommendations for modifying the flow release schedule and other project facilities and/or operations necessary to protect and maintain fishery resources, including steelhead. This study was completed in 1996, as was construction of a $14 million dollar fish screen facility at the Van Arsdale Dam diversion on the Eel River. Based on the results of the monitoring study, PG&E has developed a proposal for project operations that, along with several others, are the subject of National Environmental Policy Act review for ongoing FERC license amendment proceedings. FERC is currently conducting environmental review of this proposal with input from NMFS, DFG and the U.S. Fish & Wildlife Service (USFWS). Implementation of an alternative that provides additional instream flows in the Eel River, and provides for Sacramento pikeminnow control, in conjunction with the new fish screening facility, would be expected to improve habitat quality and benefit steelhead in this ESU by increasing survival.

On March 1, 1999, the Pacific Lumber Company, the State of California, the Department of the Interior, and the Department of Commerce entered into a complex land purchase, land exchange and Habitat Conservation Plan (PALCO HCP) transaction covering the Headwaters Forest, Elk Head Springs Forest and the remainder of Pacific Lumber Company's land holdings in Humboldt County California. The Federal and state governments acquired approximately 10,000 acres of conifer and hardwood forest, over 3,000 acres of which is ancient redwoods, some of which are over 1,000 years old. This land is now subject to Federal and state control under conservation easements.

The PALCO HCP, which has a 50-year term, covers 211,000 acres of non-Federal land timber lands in several drainages that occur in the northern portion of Northern California steelhead ESU. These include portions of several tributaries to Humboldt Bay (Elk River, Jacoby Creek, Freshwater Creek, and Salmon Creek), and portions of the Van Duzen River (including Yager Creek), Eel River, Bear River, Salt River, and Mattole River watersheds. The PALCO HCP affects the following federally listed and candidate anadromous salmonid ESUs: (1)Southern Oregon/Northern California coho salmon (threatened), (2) Northern California steelhead (candidate), and (3) California Coastal Chinook salmon (threatened). The HCP also covers numerous terrestrial species listed under the ESA and California Endangered Species Act.

The PALCO HCP's Operating Conservation Program (Program) contains the conservation and management measures and prescriptions necessary to minimize, mitigate, and monitor the impacts of take of the covered species resulting from timber operations. The Program incorporates specific conservation plans for all terrestrial and aquatic species covered under the HCP, along with measures to conserve habitat diversity and structural components.

An Aquatics Conservation Plan (ACP) is an integral part of the overall Program. The goal of the ACP is to maintain or achieve over time properly functioning aquatic habitat conditions, which are essential to the long-term survival of salmonids. The reduction in land management impacts and habitat improvement that will be realized through implementation of the ACP will also benefit other species.

Monitoring for implementation, effectiveness, and trends is a critical component of the Program. The monitoring component includes an independent third-party monitor to determine if the provisions of the aquatics plan are effective and whether

the aquatic habitat is responding as expected. There is also a provision for adaptive management if the results are not as predicted.

NMFS believes that the conservation measures contained in the HCP will protect and provide for long-term conservation of steelhead populations occurring on PALCO lands in the Northern California ESU.

2. Land Management

The California Department of Forestry and Fire Protection (CDF) enforces California's forest practice rules (FPRs) on non-Federal (private and State managed forests) lands. These rules are promulgated through the State Board of Forestry (BOF). Timber harvest activities have been documented to result in adverse effects on streams and stream side zones including the loss of large woody debris, increased sedimentation, loss of riparian vegetation, and the loss of habitat complexity and connectivity (NMFS 1996).

The vast majority of freshwater habitat in the Northern California steelhead ESU (approximately 81 percent of total land) is on non-Federal lands, with the majority being privately owned. For the major river basins in this ESU (i.e. Redwood Creek, Mad River, Eel River, Mattole River, Ten Mile River, Noyo River, Big River, Albion River, Navarro River, Garcia River, and Gualala River), private forest lands average about 75 percent of the total acreage, with a range of 42 percent (Eel River) to 94 percent (Gualala River).

NMFS reviewed the California FPRs as part of its listing determination for the Northern California steelhead ESU (53 FR 13347; March 19, 1998). That review concluded that although the FPRs mandate protection of sensitive resources such as anadromous salmonids, the FPRs and their implementation and enforcement do not accomplish this objective. Specific problems with the FPRs include: (1) protective provisions that are not supported by scientific literature; (2) provisions that are scientifically inadequate to protect salmonids including steelhead; (3) inadequate and ineffective cumulative effects analyses; (4) dependence upon registered professional foresters that may not possess the necessary level of multi-disciplinary technical expertise to develop timber harvest plans (THPs) protective of salmonids; (5) dependence by CDF on other State agencies to review and comment on THPs; (6) failure of CDF to incorporate recommendations from other agencies; and (7) inadequate enforcement due to staffing limitations. NMFS further concluded that until a comprehensive scientific peer review process was implemented and appropriate changes to the FPRs and the THP approval process were made, properly functioning habitat conditions would not be ensured on non-Federal lands in the Northern California steelhead ESU.

The NMFS/California MOA which was entered into in March 1998 to ensure the conservation of north coast steelhead in California contained specific provisions to address NMFS' concerns over the California FPRs. In the NMFS/California MOA, the State committed to: (1) conduct a scientific review of the State's FPRs, including their implementation and enforcement; (2) make appropriate changes in implementation and enforcement of the FPRs based on this review; and (3) make recommendations to the BOF for changes in the FPRs if they were found to be necessary for the conservation of Northern California coastal anadromous salmonids. Full implementation of these provisions in the NMFS/California MOA, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision to not list this ESU.

In accordance with these provisions, a subcommittee of the state's scientific review panel for its Watershed Protection Program was appointed to undertake an independent review of the FPRs. The subcommittee's review and recommendations were completed and presented to the BOF in June 1999. The scientific review panel concluded that California's FPRs, including their implementation through the timber harvest plan process, do not ensure protection of anadromous salmonid populations. Based in part on the scientific review panel report and findings in July 1999, the California Resources Agency and CalEPA jointly presented the BOF with a proposed rule change package designed to address shortcomings in the state's existing FPRs. The BOF circulated the proposed rule package for public review, held several meetings and two public hearings on the proposals from July until October 1999, but failed to take action to adopt any of the proposed FPR changes.

As a result of the listing of coho salmon in coastal watersheds in northern California, the counties of Del Norte, Siskiyou, Trinity, Humboldt, and Mendocino developed and have implemented a multi-county, regional approach to assessing and improving county-controlled activities in order to enhance the quality and increase the quantity of salmonid habitat that is potentially affected by those county activities. NMFS and the State of California have contributed funding to this multi-county planning effort.

This county-level conservation planning approach involves a thorough review of general plans, ordinances, procedures, practices, and policies developed and implemented at the county level. Through the assessment and evaluation of these county-controlled mechanisms, a process is being developed that will enable the counties to exert control at the local level over human activities that can adversely affect anadromous salmonid populations and habitat. This multi-county planning effort culminated in a Memorandum of Agreement (Multi-County MOA) which was signed by all five counties in late 1997. Under the terms of the Multi-County MOA, the counties agreed to embark on a cooperative planning and restoration effort; assess the adequacy of existing general plans, county policies and practices, zoning and other land use ordinances; review county management procedures that affect anadromous salmonid habitat in each county; recommend changes to specific county ordinances and/or practices as necessary; develop a watershed-based education and technical assistance/training program for local agencies and decision-makers that will foster better understanding of the linkages between land use and county maintenance practices and salmonid habitat; and seek to establish some form of regulatory recognition at the state and/or Federal level.

This multi-county assessment is being used to document the effectiveness of existing regulations. Where the assessment identifies areas for improvement, the planning effort will develop alternative policies, ordinances and practices that are suitable for maintaining or enhancing anadromous salmonid habitat. The assessment will address the need to focus public works projects on sites that improve fisheries habitat. A watershed-based approach will be used, even where watersheds cross county boundaries, to ensure that enhancement efforts are complementary to natural ecosystem processes.

The outcome of this county-level effort is expected to be a comprehensive and coordinated analysis of local land use regulations. Where it is found that development standards such as subdivision restrictions, zoning, and capital improvement programs may not adequately maintain or restore salmonid habitat, model ordinances will be developed for consideration by each of the participating counties. Conversely,

innovative approaches for land use (such as density modifications and standards that preserve habitat functions) developed by some counties will be presented as options for the other counties. This collaborative, regionally based planning effort is designed to be complementary with state and national salmonid recovery efforts. The planning process encourages public participation through direct contact with interested public agencies, landowners, community organizations, environmental groups, industry representatives, and others. The public process is being implemented through public hearings, meetings, scoping sessions, forums and other avenues.

Agricultural activity has had multiple and often severe impacts on salmonid habitat. These include depletion of needed flows due to irrigation withdrawals; blocking of fish passage by diversion or other structures; destruction of riparian vegetation and bank stability by grazing or cultivation practices; and channelization resulting in loss of side-channel and wetland-related habitat (NMFS, 1996).

Impacts from agricultural and grazing practices have not historically been closely regulated in California. This is an important concern to NMFS because a significant portion of the acreage in the Northern California ESU is comprised of farmland. For example, farmland constitutes approximately 25–30 percent of the total acreage of Humboldt and Mendocino counties, which in turn constitutes much of the Northern California ESU. Private lands, and public lands not administered by the Federal government, are now being addressed by the California Rangeland Water Quality Management Program (CRWQMP), which was adopted by the State Water Resources Control Board and CDF in 1995. The CRWQMP is a water quality improvement program based on the voluntary participation of landowners for compliance with state and federal non-point source pollution reduction requirements. The CRWQMP was initiated as a cooperative effort among the livestock industry, conservation organizations, and state and Federal agencies, to address the impacts of grazing and land use practices on water quality in streams that flow through private property. Through this program, private landowners will be able to maintain rangeland productivity and enhance landowners' abilities to manage these lands in a manner that maintains water quality standards necessary for the survival and recovery of listed salmonids.

Between 1995–1998, rangeland plans were developed under the CRWQMP for more than 250,000 acres on the north coast, ranging from San Francisco to the Oregon border. The State plans to review the implementation status of these plans at intervals of 3,5 and 10 years, provided that sufficient resources are available. NMFS is encouraged by these ongoing efforts. Plans that are consistent with this guidance are likely to result in meeting state water quality standards, but the program is voluntary and it is uncertain to what extent their implementation will contribute to improved habitat conditions and riparian function.

The USDA Natural Resources Conservation Service (NRCS), NMFS, USFWS, the U.S. Environmental Protection Agency (EPA), the California Association of Resource Conservation Districts (CARCD), and the State of California have recently developed a joint approach that is expected to encourage the voluntary use of improved conservation management practices for agriculture on private land. Recognizing that recovery of listed and other at-risk salmonid populations depends on the willing participation of private landowners, these agencies have the goal of providing an incentive to landowners to enhance the quality and quantity of habitat needed by species of concern. To accomplish this goal, the agencies have agreed to support cooperative approaches and consensus-building activities, foster communication among agencies and private landowners, share resources and information, and establish strong, effective working relationships that instill trust and promote sound stewardship.

This agreement is the subject of a draft Memorandum of Understanding (MOU) among the partner agencies. Through the procedures described in the MOU, practices contained in the NRCS Field Office Technical Guides (FOTG) will undergo ESA section 7 review by NMFS and USFWS. For those practices that NMFS and USFWS determine are not likely to adversely affect listed species or critical habitat, the landowner should have confidence that those practices, if implemented in accordance with the FOTG standards and specifications, will not result in any additional permitting requirement or penalties under the ESA. The objective of this MOU is to encourage the adoption of protective land use practices on private lands, to provide some regulatory assurance for landowners, to improve habitat conditions for sensitive species, to continue sustainable economic production on private lands, to facilitate better coordination among the partner agencies, and to foster better awareness and support for conservation programs throughout the State.

The next step in the NRCS MOU process will be to incorporate the specific interests of the State of California. The current draft MOU lacks language describing the roles and responsibilities of the State. The draft MOU is under review by the state and upon completion is expected to be formally signed by all parties.

3. Dredge, Fill, and In-water Construction Programs

The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would ''cause or contribute to significant degradation of the waters of the United States.'' One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative impacts or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

The COE, state, and local governments have developed and implemented procedures reviewing, approving, and monitoring gravel mining activities in Del Norte and Humboldt counties which are authorized under a Letter of Permission (LOP) process. This process regulates gravel mining in a substantial portion of the Northern California ESU (including the Mad, Eel and Van Duzen Rivers) where listed coho salmon and chinook salmon populations also occur. These procedures are designed to provide substantially improved protection for anadromous salmonids and their habitats, including steelhead. Important elements of the process include: a prohibition on gravel mining in the active channel and on trenching except in limited instances, a restriction on gravel operations to the dry season, monitoring of channel cross sections to detect changes in channel morphology and habitat conditions, fisheries monitoring, and gravel mining on a sustained yield basis. An additional element of the process in Humboldt County is the participation of an independent scientific review committee, which makes annual recommendations on gravel extraction limits and site design features in order to minimize adverse impacts.

Additionally, any channel crossings must be designed to allow for fish passage. NMFS participated in the development of these procedures and has concluded, through section 7 consultation with the COE, that these procedures will not jeopardize the continued existence of coho salmon or steelhead. NMFS recently reinitiated formal consultation with the COE on the LOP process to address the final critical habitat designation for coho salmon and the recent listing of California Coastal chinook salmon as threatened.

Section 1603 of the California Fish and Game Code requires that any person who proposes a project that will substantially divert or obstruct the natural flow or substantially change the bed, channel or river bank of any river, stream or lake, or use materials from a streambed, notify the DFG before beginning any work. The authorization for these activities under section 1603 is called a Lake or Streambed Alteration Agreement. Beginning May 1, 1999, the 1603 process was significantly modified to require a higher level of review by DFG that is in compliance with the California Environmental Quality Act (CEQA). Any proposed project that DFG determines may substantially adversely affect existing fish and wildlife resources will need to comply with the CEQA standard of mitigating project impacts to the level of insignificance. The new standard for project review has resulted in increasing the time needed for project approval from 2 weeks to 60–120 days.

Although the state has substantially improved the level of project review under the 1603 process to comply with the new CEQA standard, the state has not submitted the program to NMFS for review to determine whether it adequately protects anadromous salmonids. The state currently issues 1603 streambed alteration agreements to project applicants with the disclosure that the applicant may still need to obtain incidental take authorization from NMFS. In most cases, however, where a project proposes a stream or watercourse modification and listed species are present, a Clean Water Act, section 404 permit from the COE is required. Within the geographic area encompassing the Northern California steelhead ESU, the presence of listed coho and chinook salmon populations requires the COE to consult with NMFS under section 7 of the ESA prior to the issuance of 404 permits.

4. Water Quality Programs

Under Clean Water Act section 303(d), states, territories, and authorized Tribes are required to establish lists of impaired water bodies, set priorities for addressing the pollutant source, and write pollutant control plans to achieve and maintain water quality standards. These plans, Total Maximum Daily Loads (TMDLs), provide an effective mechanism for determining the causes of water body impairment, quantifying the various pollutant sources, and setting targets for reducing pollutant discharges. Generally, states are responsible for developing TMDLs and related implementation plans, which are subject to EPA review and approval. If the EPA disapproves a TMDL or if a state fails to establish one, the EPA is required to step in and establish the TMDL. The TMDL is then implemented through existing regulatory and non-regulatory programs to control, reduce, or eliminate pollution from both point and non-point sources.

The TMDL process provides a flexible assessment and planning framework for identifying load reductions or other actions needed to attain water quality standards such as protection of aquatic life, provision of safe drinking water, etc. The TMDL should address all significant stressors (e.g., chemicals, temperatures, sediment loads) that cause or threaten to cause deleterious effects to water quality. The TMDL assessment is the sum of the individual waste load allocations from point sources, non-point sources, natural sources, and an appropriate margin of safety to account for uncertainty. The TMDL may address single or multiple pollutants but must clearly identify the links between the water quality impairment (or threat) of concern, the causes of the threat or concern, and the load reductions or conservation actions needed to remedy or prevent the impairment.

As TMDL assessments and implementation plans are developed and approved, the State of California, through the State Water Resources Control Board and the nine Regional Water Quality Control Boards, will adopt and implement the TMDLs. The TMDL contains a problem statement, numeric targets, source analysis, allocations of loads or controls, and a monitoring plan. The implementation component includes descriptions of land management practices, remediation activities, and restoration projects necessary to attain the goals established in the TMDL assessment. It is through the implementation plan that necessary controls and restoration actions are assigned to specific parties and attainment schedules are promulgated.

In coastal watersheds of northern California, 38 water body segments have been identified as impaired and have been scheduled for development of TMDLs. The schedule for development of TMDLs in northern California extends to the year 2011 (Russian River and Lake Pillsbury). The schedule in this area is driven in part by a consent decree *(Pacific Coast Federation of Fishermen's Associations, et al.* v. *Marcus*, No. 95–4474 MHP, March 11, 1997). Under this consent decree, EPA agreed to oversee the development of TMDLs on 18 rivers on the north coast of California, 12 of which are located within the Northern California steelhead ESU.

The consent decree establishes a schedule for developing TMDL criteria for listed rivers. Under this schedule, seven river basins in the Northern California ESU would have TMDLs developed within the next 2 years, with the remaining rivers having TMDLs developed by 2002. This legally-binding schedule is expected to result in significant progress on improving the beneficial uses of these watersheds, where the beneficial use has been identified as habitat for salmonids.

On May 28, 1998, the North Coast Regional Water Quality Control Board approved a TMDL for the Garcia River. The TMDL contains the following elements: (1) Findings that the Garcia River is impaired due to sediment and temperature impacts resulting from land use practices, primarily timber operations and related activities; (2) adoption of the Water Quality Attainment Strategy as part of the Water Quality Control Plan for the North Coast Region (Basin Plan) that would eliminate 90 percent of total controllable road-related sediment sources within 20 years and 50 percent of controllable upslope sediment sources within 40 years; (3) numeric targets including specified numerical values for percent fine sediments, frequency of pools in stream habitat profiles, and improving trends in large woody debris; (4) an implementation plan which specifies that either default prescriptions be observed or a site-specific plan be implemented that provides assurances that source reduction targets will be met; (5) assurances that sediment reduction or control goals are capable of being met and that site-specific planning and implementation by landowners provides a flexible framework; and (6) a monitoring plan to verify that conservation practices are implemented and are effective.

The TMDL process provides a flexible, adaptive management approach that relies on substantial public input and participation to set targets, identify protection measures, and implement

and monitor corrective practices. The completion of the Garcia River TMDL, and the initiation of TMDLs for the other listed rivers, represents a significant step forward in improving watershed health for steelhead and other salmonids on the north coast of California. In the long-term, the development and implementation of these TMDLs should be beneficial for steelhead. However, their development and implementation will be difficult and it will take many years to assess their efficacy in protecting steelhead habitat. Furthermore, it is essential that the EPA consults with NMFS on the formulation of TMDLs in waters that contain listed salmonids. Such consultations will help ensure that TMDLs adequately address the needs of these species.

5. State Hatchery and Harvest Management

In an attempt to mitigate the loss of habitat and enhance fishing opportunities, extensive hatchery programs have been implemented throughout the range of steelhead on the west coast. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally reproducing stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing steelhead (NMFS, 1996). Collection of native steelhead for hatchery broodstock purposes often harms small or dwindling natural populations. On the other hand, when properly managed, hatcheries can play an important role in steelhead recovery through carefully controlled supplementation programs.

In the past, non-native steelhead stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in California (Bryant, 1994; Busby *et al.*, 1996; NMFS, 1997a). Because of problems associated with this practice, DFG has developed and implemented a Salmon and Steelhead Stock Management Policy. This policy recognizes that mixing of non-native stocks with native stocks is detrimental, and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as to minimize interactions between hatchery and natural populations.

NMFS's BRT identified the potentially adverse impacts of interactions between hatchery (Mad River hatchery) and wild steelhead as an important concern with regard to the Northern California ESU (NMFS, 1997a). As part of its strategic management plan for this ESU, DFG has implemented several changes in its hatchery practices. In addition, DFG has implemented several additional measures pursuant to the 1998 NMFS/California MOA. These hatchery management measures include: (1) marking of all hatchery steelhead released from the Mad River hatchery and all cooperative rearing facilities in the Northern California ESU; (2) continuation of long-standing hatchery management practices aimed at minimizing hatchery and wild steelhead interactions including prohibitions on stocking of resident trout in anadromous waters; releasing hatchery steelhead only at times, sizes and places that minimize impacts on naturally produced fish; only releasing hatchery fish that are determined to be healthy; (3) initiation of monitoring efforts intended to measure hatchery fish stray rates; and (4) a joint NMFS/DFG review of the Mad River hatchery including its stocking history, analysis of current broodstock, and its consistency with the strategic management plan for the Northern California ESU.

In conjunction with the improved hatchery management practices, in-river sport fisheries in the Northern California ESU now focus on harvest of marked, hatchery-produced steelhead, and sport fishing regulations have been modified to protect wild adult and juvenile steelhead.

Other Natural or Human-Made Factors Affecting Continued Existence of Steelhead

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996a).

Efforts Being Made to Protect West Coast Steelhead

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have lead to the decline of the species. NMFS then assesses conservation measures to determine if they ameliorate risks to the species.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) The substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such efforts will be reliably implemented; and (3) the presence of monitoring provisions that determine effectiveness and that permit adaptive management (NMFS, 1996b). In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure that intended conservation benefits are realized.

As part of its west coast steelhead status review, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act'' (NMFS, 1996c). NMFS also reviewed conservation measures being implemented by the State of California for steelhead at the time of its final listing determination for the Northern California, Klamath Mountains Province, and Central Valley steelhead ESUs (63 FR 13347). The following sections update the current status of the State of California's conservation efforts for steelhead with particular emphasis on the Northern California steelhead ESU.

The State of California's conservation efforts that address steelhead in the Northern California ESU include: (1) development of the state's Watershed Protection Program, which includes funding and implementation of an expanded watershed planning and habitat restoration program; (2) implementation of the DFG's strategic management plan for the Northern California ESU; and (3) implementation of the 1998 NMFS/California MOA which addresses management of coastal steelhead in northern California. The status of these conservation efforts is discussed in more detail here.

California Watershed Protection Program and Implementation of SB 271

In July 1997, California's Governor created the state's Watershed

Restoration and Protection Council (WPRC) for the purpose of: (1) overseeing all state activities aimed at watershed protection and enhancement, including the conservation and restoration of anadromous salmonids in California; and (2) directing the development of a California Watershed Protection Program that would provide for the conservation of anadromous salmonids in the State of California. A working group of the WPRC issued a detailed report in December 1998 entitled ''Protecting California's Anadromous Fisheries.'' The Executive Order that established this program expired in January 1999. However, continued coordination of the program is occurring under the auspices of the California Biodiversity Council. NMFS is encouraged that the State initiated a comprehensive, watershed-based approach to salmon management and restoration, but the California Watershed Protection Program is still under development and has not been implemented as originally envisioned.

To support the Governor's WPRC and its efforts to develop a Watershed Protection Program, DFG implemented a $3 million Watershed Initiative in 1997–98 for coastal watershed projects north of San Francisco, through its Fishery Restoration Grants Program. These projects focused on watershed and riparian habitat restoration, instream habitat restoration, and watershed evaluation, assessment, planning, restoration project maintenance, and monitoring. Beginning in 1998–1999, DFG funded additional staff positions to assist in watershed planning efforts and grant proposal development.

A key element of the state's Watershed Protection Program that is also specified in the 1998 NMFS/California MOA is DFG's implementation of an expanded habitat restoration program for coastal salmonids, including steelhead. In 1997, the California legislature enacted Senate Bill 271 which provided DFG with $43 million over 6 years for habitat restoration and watershed planning to benefit anadromous salmonids in coastal watersheds, including the geographic area which encompasses the Northern California steelhead ESU. The program was initiated in 1997–98 and has expanded since that time. Based on the SB 271 legislation, funding is expected to continue through at least 2002. Substantial funding from this program has been committed to habitat restoration, enhancement, and watershed planning efforts within the Northern California steelhead ESU since 1997–98. Throughout Humboldt and Mendocino counties, which constitute much of the geographic area comprising the Northern California steelhead ESU, DFG has funded over 200 projects costing in excess of $7.5 million during the past 3 years (1997–98 through 1999–2000). NMFS participates as an ex-officio member of the Advisory Committee that reviews the distribution of SB 271 grant funding, to help ensure that available funds are spent on projects that will contribute to the conservation of listed salmonids, including north coast steelhead. In addition to the expanded habitat restoration program funded by SB 271, DFG has added additional staff positions to assist in administering the program, provide technical support in the development of watershed plans and habitat restoration projects, and implement a new steelhead monitoring and adaptive management program throughout coastal northern California.

Northern California Steelhead ESU Strategic Plan

In February 1998, DFG completed its strategic management plan for steelhead stocks in the Northern California ESU (DFG 1998). In March 1998, the state and DFG formally committed to implement this plan as part of the NMFS/California MOA. The plan describes existing and new management measures for recreational steelhead angling, steelhead hatchery programs, and steelhead monitoring, assessment, and adaptive management efforts in this ESU. In addition, the plan describes DFG's ongoing efforts to protect and enhance steelhead habitat within this ESU. These management measures were intended to provide immediate protection for steelhead populations in this ESU, while longer-term measures were implemented to protect anadromous fish habitat on non-federal lands through the Watershed Protection Program and the SB 271 habitat restoration program. The main elements of the Northern California steelhead strategic management plan are briefly discussed here.

(a) Harvest Measures

The strategic management plan includes several harvest management actions which are intended to reduce impacts on adult and juvenile steelhead in the Northern California ESU. These include: (1) no retention of unmarked (i.e., naturally produced) adult and juvenile steelhead in all rivers and streams; (2) fishing closures in steelhead rearing tributaries to protect juveniles; (3) expanded closures in mainstem rivers through May to protect outmigrating juvenile steelhead; and (4) various gear and bait restrictions designed to reduce mortality associated with incidental hooking of steelhead.

In February and March 1998, the California Fish and Game Commission (Commission) adopted emergency changes to the State's inland fishing regulations which were intended to implement the harvest regulation changes contained in the Northern California steelhead strategic management plan. In conjunction with the final listing determination for this ESU in March 1998(63 FR 13347), NMFS reviewed these regulatory changes and concluded that they would substantially reduce impacts to adult and juvenile steelhead and also assist in the conservation of the ESU (NMFS 1998). These emergency regulations were formally enacted by the Commission in June 1998 following public review and comment, and they currently remain in place. NMFS believes that these angling regulations continue to provide the reduction in impacts and conservation benefits that were expected at the time the decision was made not to list this ESU in March 1998.

(b) Hatchery Measures

The strategic plan for the Northern California ESU contains a wide range of existing and new hatchery management measures that are intended to reduce the impacts of hatchery steelhead programs on wild steelhead populations in this ESU. Measures incorporated into the plan include: (1) release strategies that require a minimum 6 inches (15.2 cm) size and release at the hatchery rather than off-site; (2) marking of all hatchery-produced fish that are released and the implementation of spawner surveys to assess the extent to which hatchery fish stray into natural spawning areas; (3) a commitment to reduce hatchery releases or implement other changes in hatchery practices if significant straying of hatchery fish is found to occur; (4) a cap on hatchery production to current levels, regular health checks during each rearing cycle, and the destruction of diseased fish that cannot be effectively treated; (5) a review of the existing operating procedures for all cooperative rearing facilities permitted by the state; and (6) adoption of a requirement that all cooperative facilities develop and submit 5-year management plans to the State for approval. NMFS previously reviewed these existing and new hatchery management measures and concluded that they would substantially reduce potential impacts to wild steelhead (NMFS 1998d). Because of NMFS concerns regarding the operations of the the Mad River Hatchery which is

located in this ESU, DFG also committed in the 1998 NMFS/California MOA to: (1) undertake a comprehensive review of the hatchery program, including its stocking history and genetic analysis of current broodstock; and (2) develop a plan to eliminate any adverse impacts of hatchery operations on Northern California steelhead if necessary.

DFG implemented a statewide mass-marking program for its hatchery steelhead programs beginning in 1997 which includes the hatchery steelhead programs in the Northern California steelhead ESU. DFG is also requiring all cooperative rearing programs that produce steelhead in this ESU to mark all released fish. This marking program has continued since its implementation in 1997 and DFG is committed to continuing this program into the future. DFG and the NMFS have also initiated a comprehensive review of DFG's hatchery programs in this ESU (Mad River Hatchery and cooperative rearing programs), with the objective of ensuring that these programs are compatible with the conservation of naturally produced steelhead. This review is expected to be completed in 2000. Comprehensive monitoring of stray rates for hatchery produced fish has not been implemented in this ESU, but DFG expects to begin a north coast steelhead stray rate monitoring program in 2000.

(c) Steelhead Monitoring and Adaptive Management

The strategic management plan for the Northern California ESU identifies ongoing and expanded monitoring programs to assess steelhead abundance. A commitment to implement these programs is contained in the 1998 NMFS/California MOA. A key element of this monitoring program was a commitment to establish a joint scientific and technical team including representatives from DFG and NMFS to design appropriate detailed monitoring programs for steelhead in this ESU. NMFS considered these monitoring efforts critically important given the uncertain status of steelhead populations in these ESUs, and indicated that adequate State funding was critical to implementing the program (63 FR 13347). As part of the NMFS/California MOA, both DFG and NMFS committed to seek adequate funding for this program. The DFG has taken significant steps to implement this expanded steelhead monitoring program in the Northern California steelhead ESU, but the full program has not yet been fully developed or implemented. The DFG has committed significant fiscal resources to hire and redirect existing staff resources to create a north coast steelhead monitoring team and program that will address the Northern California steelhead ESU as well as areas further north in California, and has established a scientific and technical team to guide development of this effort. Comprehensive monitoring proposals have been developed and are under review by the scientific and technical team. NMFS expects the finalized monitoring program for this ESU to be implemented in early 2000.

NMFS/California Memorandum of Agreement

NMFS evaluated a wide range of conservation efforts that California had adopted or was in the process of developing in conjunction with its decision not to list the Northern California steelhead ESU (63 FR 13347). NMFS concluded that DFG's harvest and hatchery programs for this ESU would contribute to increasing escapement of adults, substantially reduce impacts on juveniles resulting in increased survival, and reduce adverse impacts of hatchery populations on wild fish. In the near-term, NMFS expected these measures would contribute to improved survival and population stability for steelhead. In addition, DFG's monitoring and adaptive management programs were expected to provide state and Federal managers with the ability to assess the status of steelhead populations and their response to harvest and hatchery management changes. However, NMFS was also concerned that California's habitat protection efforts, (*e.g.*, development of a Watershed Protection Program and implementation of the expanded habitat restoration program established by SB 271), were not adequate to secure properly functioning habitat conditions for this ESU over the long-term. To address these concerns, NMFS entered into a MOA with the State (NMFS/California MOA 1998).

Under the terms of the NMFS/California MOA, the State committed to a broad range of measures including: (1) compliance with existing State regulations, with particular emphasis on the management measures contained in the strategic management plans for north coast steelhead; (2) implementation of harvest and hatchery management measures contained in the strategic management plan for Northern California steelhead; (3) implementation of a monitoring evaluation and adaptive management program for steelhead, including those elements contained in the strategic management plan for Northern California steelhead; (4) continued implementation of a California Watershed Protection Program, including the SB 271 watershed planning and habitat restoration program in coastal watersheds, and the joint review and revision of the State's forest practice rules (FPRs), in conjunction with a scientific review panel to ensure that the revised FPRs were adequate to conserve anadromous salmonids, including steelhead. As previously discussed, because of the preponderance of private timber lands and timber harvest activity in the Northern California ESU, NMFS considered this to be a critically important provision in the MOA.

Many of the provisions in the NMFS/California MOA relating to the Northern California steelhead ESU have been or are being implemented by the state; however, critically important provisions related to revision of the FPRs have not been implemented. The current status of the State's effort to implement the MOA, with particular regard to the Northern California steelhead ESU, is discussed here.

(a) Compliance with Existing State Regulations

In accordance with section 4 of the NMFS/California MOA, DFG made recommendations to the Fish and Game Commission to implement detailed angling regulation changes contained in the strategic management plan for Northern California steelhead. The Commission adopted these recommendations on an emergency basis in February 1998 and permanent regulations became effective in August 1998. Within this ESU, these regulations specifically prohibit retention of naturally spawned adult steelhead, prohibit fishing for naturally produced juvenile steelhead in tributary streams, minimize the angling impacts on juvenile steelhead in mainstem rearing areas through gear/bait restrictions, prohibit retention of summer steelhead and prohibit fishing in their summer holding areas, and provide for the retention of marked, hatchery-produced steelhead.

(b) Harvest and Hatchery Management

In accordance with section 6 of the NMFS/California MOA, two provisions have been implemented. First, the DFG recommended and the Fish and Game Commission adopted permanent regulations that provide only for the retention of non-listed, hatchery-produced steelhead. Second, the DFG has implemented a statewide mass marking program for hatchery produced steelhead. This program was initiated

with brood year 1997 steelhead released in winter 1998, and the marking program has continued annually since that time. This program has resulted in complete marking of all steelhead produced at the Mad River Hatchery which is located in this ESU. In addition, DFG is requiring that all cooperative rearing programs that produce steelhead mark them prior to release.

Three additional provisions contained in section 6 of the NMFS/California MOA have not yet been implemented, but are either in progress or will be initiated shortly. To date, DFG has not implemented a process for establishing recovery and strategic goals for north coast steelhead, including this ESU, nor has it initiated a monitoring program to measure stray rates of hatchery produced steelhead. However, the DFG has established a North Coast Steelhead Monitoring Program to develop and implement a monitoring program, which will include the Northern California steelhead ESU, and a joint scientific and technical team to provide guidance to the program. DFG has developed a preliminary monitoring program and is consulting the joint scientific and technical team to refine that program, and is exploring options for establishing recovery and strategic goals within this ESU. NMFS anticipates that this program will commence in 2000. Although the monitoring program specified in the NMFS/California MOA has not been fully implemented, DFG has continued to carry out several monitoring and research programs on the north coast, primarily in the Klamath Mountains Province ESU, which have provided data useful for the management of steelhead. Finally, NMFS and DFG have recently undertaken a state-wide review of the state's hatchery programs, including the Mad River Hatchery which in located in this ESU, as well as the state's cooperative rearing program which has a small number of projects within this ESU. This review is expected to be completed by June 2000.

(c) Monitoring, Evaluation, and Adaptive Management

In accordance with section 7 of the NMFS/California MOA, the DFG has implemented, at least in part, two key provisions. First, DFG has established a joint scientific and technical team to assist it with the development of a comprehensive monitoring program for steelhead on the north coast, including the Northern California ESU. The NMFS/California MOA called for this program to be developed by June 1998; however, as discussed in the preceding section, DFG has not yet completed development of the study plan or initiated a comprehensive monitoring program. Second, DFG has secured the necessary funding to establish a north coast steelhead monitoring program, including the dedication of professional staff and the acquisition of necessary equipment and facilities. A preliminary monitoring program plan has been developed by the monitoring program staff and this plan is currently under review by the joint scientific and technical team.

(d) California's Watershed Protection Program

Section 9 of the NMFS/California MOA commits the State to continue development of its Watershed Protection Program, with a specific element addressing salmonid conservation, and to coordinate with NMFS in establishing a scientific review panel that would advise the State in its development of this program. In addition, Section 9 commits the state to direct personnel and fiscal resources to implement an expanded habitat restoration program in coastal watersheds using SB 271 funds. Details of the state's Watershed Protection Program and DFG's efforts to implement expanded watershed planning and habitat restoration in coastal watersheds were described previously (see Efforts Being Made to Protect West Coast Steelhead).

Section 9 of the NMFS/California MOA contains several measures relating to the review and revision of the State's FPRs because of NMFS's concerns regarding the effects of State-regulated timber harvest on freshwater habitat conditions for anadromous salmonids, including steelhead in the Northern California ESU. Specifically, the NMFS/California MOA calls for: (1) a joint review of the FPRs by NMFS and the State, including their implementation and enforcement; (2) the State to make appropriate changes in implementation and enforcement, if necessary; (3) the state, in consultation with NMFS, to make recommendations to the BOF for changes in the FPRs necessary to conserve anadromous salmonids; and (4) the BOF to complete action on the recommended changes in the FPRs by January 2000. Full implementation of these NMFS/California MOA provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision to not list the Northern California steelhead ESU.

In accordance with these provisions, the state established a subcommittee of the scientific review panel for its Watershed Protection Program to undertake an independent review of the State's FPRs. In June 1999, this subcommittee submitted a report to the BOF which concluded that the state's FPRs, including their implementation through the timber harvest plan process, do not ensure protection of anadromous salmonid populations. Based in part on the scientific review panel's findings, the Secretaries of the California Resources Agency and CalEPA jointly presented a proposed package of FPR revisions to the BOF in July 1999 that was designed to address shortcomings identified by the scientific review committee. At its October 6–7, 1999, meeting, the BOF failed to take action to adopt the proposed rule changes, thereby eliminating to possibility of implementing improvements in California's FPRs by January 1, 2000.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

In December 1997, the NMFS' BRT concluded that the Northern California steelhead ESU was likely to become endangered within the foreseeable future based on a review of the best available biological information (NMFS 1997). Based on a review of updated abundance and trend information that was available for this ESU, NMFS's Southwest Fisheries Science Center (NMFS/Tiburon Lab 1/2000), concluded that the current biological status of the ESU has changed little since it was last evaluated by NMFS' BRT. Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is well below estimates in the 1980s and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960s levels.

After taking into consideration state and Federal efforts for the conservation of steelhead, NMFS previously decided that threats to the ESU were sufficiently reduced that a listing of the Northern California steelhead ESU as threatened was unnecessary. The key Federal and state conservation measures which NMFS concluded reduced threats to this ESU were: (1) implementation of the NMFS/California MOA, with particular emphasis on the provisions intended to improve non-Federal forest land protections because of the predominance of non-Federal lands in the California portion of this ESU (81 percent non-Federal land); (2) substantial changes to in-river harvest regulations by California; and (3) general improvements in the ESU resulting from implementation of the DFG's strategic management plan for this ESU, the State's Watershed Protection Program, and other provisions in the NMFS/California MOA which serve to implement steelhead angling regulation changes, hatchery steelhead management changes, habitat protections and restoration, and expanded steelhead monitoring.

As previously discussed in this document, California has implemented several of the conservation measures that NMFS relied upon in making its decision not to list the Northern California ESU. Specifically, the state has enacted substantial changes to the state's in-river angling regulations in 1998 to protect coastal steelhead populations including steelhead in this ESU. These regulations, with slight modification, remain in effect, and NMFS believes they continue to provide the substantial protection and conservation benefits that were expected to occur at the time of the decision not to list this ESU. The State has also implemented, or begun to implement, several other conservation measures for this ESU, including extensive watershed planning and/or habitat restoration through the SB 271 program, marking of hatchery produced steelhead and other improvements in hatchery practices, and steelhead monitoring. Although implementation of some of these measures has been delayed, as is the case for the steelhead monitoring program, NMFS continues to believe that these efforts will collectively benefit steelhead in this ESU and will eventually contribute to an improved understanding of its status.

Although these conservation efforts are expected to benefit steelhead in this ESU, NMFS continues to believe that improved habitat protection and restoration of properly functioning freshwater habitat conditions for spawning, rearing, and migration are essential to the long-term survival and recovery of this ESU. Because Federal land ownership is both fragmented and limited in this ESU (approximately 19 percent of ESU), the key to achieving habitat protection and properly functioning habitat conditions in this ESU is the improvement of land management activities on non-Federal lands (approximately 81 percent of ESU). To ensure improved protection of habitat on non-Federal lands in this ESU, the NMFS/California MOA contained several provisions for the review and modification of the state's FPRs. Full implementation of these provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's previous decision not to list this ESU. Because the State has failed to implement changes in the FPRs as called for in the NMFS/California MOA, critically important conservation measures are not being implemented to reduce the threats to this ESU from timber harvest activities on non-Federal lands. For this reason, NMFS concludes that the conservation measures fail to provide for the attainment of properly functioning habitat conditions necessary to provide for the long-term protection and conservation of this ESU.

Based on a review of the best available information, therefore, NMFS concludes that the Northern California steelhead ESU warrants listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the December 1997 scientific conclusions of the BRT regarding this ESU, the results of an updated status review for the ESU, and the current status of all Federal, state, and local conservation efforts directed at this ESU, including implementation of provisions for the NMFS/California MOA for steelhead.

NMFS has previously examined the relationship between hatchery and natural populations of steelhead in this ESU, and also assessed whether any hatchery populations are essential for their recovery. At this time, NMFS does not believe any specific hatchery populations warrant listing.

At this time, NMFS is only proposing to list the anadromous life forms of *O. mykiss*.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations it finds necessary and advisable to provide for the conservation of threatened species. Section 9 of the ESA prohibits violations of protective regulations for threatened species promulgated under section 4(d). The 4(d) protective regulations may prohibit, with respect to the threatened species, some or all of the acts which section 9 of the ESA prohibits with respect to endangered species. These section 9 prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS intends to develop and promulgate a 4(d) protective regulation for the Northern California steelhead ESU in a separate rulemaking. The process for completing the 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS has flexibility under section 4(d) to tailor the protective regulations to provide for the conservation of the species. Even though existing conservation efforts and plans are not sufficient to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process, starting with the protective regulations. For example, the interim 4(d) rule for the Southern Oregon/Northern California coho (62 FR 24588, May 7, 1997) does not prohibit habitat restoration activities conducted in accordance with approved plans, nor does it prohibit fisheries conducted in accordance with an approved state management plan. NMFS has recently proposed 4(d) regulations for all threatened ESUs of steelhead (64 FR 73479). Future 4(d) rules may contain limited take prohibitions applicable to activities such as forestry, agriculture, and road construction, when such activities are conducted in accordance with approved conservation plans.

Sections 7(a)(2) and 7(a)(4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or adversely modify critical habitat or proposed critical habitat.

Examples of Federal actions likely to affect steelhead in the Northern California ESU include authorized land management activities of the U.S. Forest Service and Bureau of Land Management, operation of hydroelectric and storage projects permitted by FERC, and activities permitted by the COE. Such activities may include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Other Federal actions,

including the COE section 404 permitting activities under the CWA, COE permitting activities under the River and Harbors Act, FERC licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed chinook salmon and steelhead for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species, so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research not receiving Federal authorization or funding, logging, road building, grazing, and diverting water onto private lands.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS, jointly with USFWS, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Native American tribal groups, Federal and state agencies, and the private sector.

NMFS and USFWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. At the time of the final rule for the Northern California steelhead ESU, NMFS will identify to the extent known specific activities that will not be considered likely to result in violations of section 9 once a 4(d) rule has been adopted, as well as activities that will be considered likely to result in violations. NMFS believes that, based on the best available information, the following actions will not be prohibited in a 4(d) rule and therefore will not result in a violation of section 9:

1. Possession of steelhead from any steelhead ESU listed as threatened which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization, or diversion, for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially harm steelhead in the Northern California ESU and therefore may be prohibited in a 4(d) rule applying section 9 take prohibitions, include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitat in the proposed ESU (e.g., logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).

2. Destruction/alteration of steelhead habitat in the proposed ESU, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting steelhead in the proposed ESU.

4. Violation of discharge permits.

5. Pesticide applications.

6. Interstate and foreign commerce of steelhead from the proposed ESU and import/export of steelhead from any ESU without a threatened or endangered species permit.

7. Collecting or handling of steelhead from the proposed ESU. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

8. Introduction of non-native species likely to prey on steelhead in the proposed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of steelhead in the Northern California ESU under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the ESA section 9 take prohibitions, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. While NMFS has completed its initial analysis of the biological status of steelhead in the Northern California ESU, it has not performed the full analysis necessary for designating critical habitat at this time. It is NMFS' intent to develop a critical habitat proposal for this ESU within the next year as soon as the analysis can be completed.

Public Comments Solicited

NMFS has exercised its best professional judgement in developing this proposal to list the Northern California steelhead ESU. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. NMFS is interested in any additional information concerning: (1) biological or other relevant data concerning any threats to steelhead in this ESU; (2) the range, distribution, and population size of steelhead in this ESU; (3) current or planned activities in the proposed ESU and their possible impact on steelhead; (4) steelhead escapement, particularly escapement data partitioned into natural

and hatchery components; (5) the proportion of naturally reproducing fish that were reared as juveniles in a hatchery; (6) homing and straying of natural and hatchery fish; (7) the reproductive success of naturally reproducing hatchery fish (i.e., hatchery-produced fish that spawn in natural habitat) and their relationship to proposed ESU; (8) efforts being made to protect native, naturally reproducing populations of steelhead in this ESU; and (9) suggestions for specific regulations under section 4(d) of the ESA that should apply to steelhead in this ESU. Suggested regulations may address activities, plans, or guidelines that, despite their potential to result in the take of listed fish, will ultimately promote the conservation and recovery of threatened steelhead.

NMFS will review all public comments and any additional information regarding the status of the Northern California steelhead ESU and will complete a final rule within 1 year of this proposed rule, as required under the ESA. The availability of new information may cause NMFS to reassess the status of this ESU.

Joint Commerce-Interior ESA implementing regulations state that the Secretary ''shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list * * * or to designate or revise critical habitat.'' (see 50 CFR 424.16(c)(3)). A public hearing schedule on this proposal is contained in this notice. A public hearing will provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters. Written comments on the proposed rule should be submitted to NMFS (see **ADDRESSES**).

References

A complete list of all cited references is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). See NOAA Administrative Order 216–6.

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866.

Executive Order 13132—Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with State and local government agencies in the course of assessing the status of the Northern California steelhead ESU, and considered, among other things, state and local conservation measures. State and local governments have expressed support both for the conservation of the Northern California steelhead ESU and for activities that affect this ESU. The history and content of this dialogue, as well as the basis for this proposed action, is described in the **SUPPLEMENTARY INFORMATION** section of this document, and in other **Federal Register** documents preceding this proposed action. (See 61 FR 41541, August 9, 1996; 62 FR 43974, August 18, 1997; and 63 FR 13347, March 19, 1998). NMFS staff have had numerous discussions with various governmental agency representatives regarding the status of this ESU, and have sought working relationships with agencies and others in order to promote salmonid restoration efforts. In addition, NMFS' staff have given presentations to interagency forums and other interested groups considering conservation measures. As the process continues, NMFS intends to continue engaging in informal and formal contacts with affected state, local or regional entities, giving careful consideration to all written or oral comments received. As one part of that continued process, NMFS has scheduled public hearings on this proposed action. NMFS also intends to consult with appropriate elected officials in the establishment of a final rule.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d) or proposing to designate critical habitat. Prior to finalizing 4(d) regulations for this ESU, or proposing to designate critical habitat, NMFS will comply with all relevant NEPA and RFA requirements.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: February 4, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.102, paragraph (a)(22) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(22) Northern California steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in coastal river basins ranging from Redwood Creek in Humboldt County, California to the Gualala River, inclusive, in Mendocino County, California.

* * * * *

[FR Doc. 00–3283 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 012400B, 012900C]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Deep-sea Red Crab Fishery; Scoping Process

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

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS), an Environmental Impact Statement (EIS), and notices of scoping processes; requests for comments; extensions of the comment periods.

SUMMARY: The New England Fishery Management Council (Council) recently announced its intention to prepare Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and a Fishery Management Plan for deep-sea crab, and, if necessary, to prepare an SEIS and an EIS, respectively, to analyze the impacts of any proposed management measures for this action. NMFS is extending the comment period for submission of written comments for both actions to ensure opportunity for public comment.

DATES: Written comments on the intent to prepare the SEIS for Amendment 10 to the Atlantic Sea Scallop FMP must be received on or before 5:00 p.m., local time, March 6, 2000. Written scoping comments on the intent to prepare an EIS for the deep-sea red crab fishery must be received on or before 5:00 p.m., local time, March 3, 2000.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–0492. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: On February 4, 2000 (65 FR 5488), NMFS published notification of the Council's intention to prepare Amendment 10 to the Atlantic Sea Scallop FMP. See the February 4, 2000, **Federal Register** notification for background and scoping information related to Amendment 10 and for the public meeting schedule. NMFS is extending the period to submit written comments from March 1, 2000, to March 6, 2000.

On February 2, 2000 (65 FR 4941), NMFS published notification of the Council's intention to prepare an FMP for deep-sea red crab and to prepare an EIS, if necessary. See the February 2, 2000, **Federal Register** notification for background and scoping information related to this action and for the public meeting schedule. NMFS is extending the period for submission of written comments from February 21, 2000, to March 3, 2000.

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

Dated: February 7, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–3285 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 012800F]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting to give the public an opportunity to comment on a regulatory amendment to be implemented under the framework process of the Council's Pelagics Fishery Management Plan. The measure would establish a 50-nautical mile (nm) closure to pelagic fishing vessels larger than 50 ft (15.24 m) around Tutuila and Manua Islands, and a 30-nm closure around Swain's Atoll.

DATES: The meeting will be held February 17, 2000, from 3:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held in the conference room at the Department of Marine and Wildlife Resources (DMWR) in American Samoa at the address given here. Copies of the background material summarizing the Council's previous deliberations, rationale, and analysis of the preferred alternative may be obtained from the DMWR, P.O. Box 3730, Pago Pago, American Samoa 96799.

FOR FURTHER INFORMATION CONTACT: Ray Tulafono, Director, DMWR; telephone 684–633–4456.

SUPPLEMENTARY INFORMATION: This meeting is being convened to give the public in American Samoa the opportunity to comment on a revised framework measure under the Council's Fishery Management Plan for the Pelagic Fisheries of the Western Pacific region. In December 1997, at its 94th Meeting, the Council voted to recommend a closed area from which large (greater than 50 ft (15.24 m)) pelagic fishing vessels would be excluded to protect the small vessel longline fishery in American Samoa. That proposed revision was adopted under the two-meeting framework process. The measure would have established a 50-nm closure to pelagic fishing vessels larger than 50 ft (15.24 m) around Tutuila and Manua Islands, and a 30-nm closure around Swain's Atoll. The recommended closure was sent to the NMFS Southwest Regional Administrator in October 1998 but was disapproved in March 1999, with the advice that it could be re-submitted if amended to include greater justification for closed areas under National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act.

Subsequently a revision of the framework measure has been drafted that includes a preferred alternative to implement a 50-nm closure to pelagic fishing vessels larger than 50 ft (15.24 m) around Tutuila and Manua Islands, and a 30-nm closure around Swain's Atoll. The Council will take final action on this framework measure at its 102nd meeting which will be held between February 28 and March 2, 2000, in Honolulu, HI.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ray Tulafono, 684–633–4456 (voice), or 684–633–5944 (fax), at least 5 days prior to the meeting date.

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

Dated: February 8, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–3213 Filed 2–8–00; 4:34 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 020200B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting; public scoping hearing; public hearing.

SUMMARY: The Western Pacific Fishery Council's (Council) will hold its 73rd meeting of its Scientific and Statistical

Committee (SSC) in Honolulu, HI. Also, public scoping hearings will be held on the intent to prepare an Environmental Impact Statement (EIS) for the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (Precious Corals FMP).

The Council also announces its intention to develop amendments to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish and Seamount Groundfish FMP), Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP), and Fishery Management Plan for the Precious Corals FMP.

DATES: The SSC meeting will be held on February 22, 2000, from 9:00 a.m. to 5:00 p.m., and on February 23–24, 2000, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The 73rd SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items listed here. The order in which agenda items will be addressed is subject to change.

8:30 a.m. Tuesday, February 22, 2000

A. Electronic logbooks

B. Fisheries Data Coordinating Committee—Data Workshop 2000

C. Status of the stocks

1. Bottomfish fishery
2. Crustaceans fishery
a. Harvest Guideline
3. Precious corals fishery
4. Location of the catch

D. Draft Coral Reef Ecosystem Fishery Management Plan/Preliminary Draft Environmental Impact Statement (DEIS)

1. Review of Council's preferred alternative
a. Fishing permit and reporting
b. Restrictions of gear and methods
c. Marine Protected Areas
d. Framework provisions
e. Process for Plan Team (PT) coordination
2. Review of comments from region-wide public meetings
3. Federal initiatives
a. Congressional coral reef bills
b. U.S. Coral Reef Task Force action plan
4. Agency research plans for coral reefs
a. Federal (NMFS, Fish and Wildlife Service (FWS))
b. State/territories/Commonwealth of the Northern Mariana Islands (CNMI)

E. Northwestern Hawaiian Islands (NWHI)

1. Concerns regarding existing fisheries
a. Status of monk seals
b. Marine Mammal Commission
c. Monk Seal Recovery Team
d. ECOSIM (ecological simulation) model
e. Agencies (NMFS, Coral Reef Task Force, FWS, Department of Land and Natural Resources, U.S. Navy/U.S. Coast Guard)
2. Hawaii advisory body recommendations
a. Coral Reef Ecosystem PT
b. Ecosystem & Habitat Advisory Panel (AP)
c. Bottomfish PT/AP
d. Crustaceans AP/AP
e. Precious Corals PT/AP
3. Lawsuit to close lobster and bottomfish fisheries

8:30 a.m. Wednesday, February 23, 2000

F. Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) Issues

1. 3rd & 4th quarter 1999 Hawaii and American Samoa longline fishery report
2. American Samoa
a. Framework measure
b. Marine Conservation Plan
3. Shark management
a. Shark catch and disposition in 1999 in Hawaii longline fishery
b. Blue shark stock assessment
c. Report of cultural study of sharks and shark finning in the western Pacific Region
d. National Plan of Action—Sharks
e. Pelagics FMP amendment for shark management
f. Ocean Wildlife Campaign's concern for blue sharks
4. Seabird interactions in the Hawaii longline fishery
a. Status of amendment
b. Short-tailed albatross biological opinion
c. National Plan of Action—seabirds
5. Turtle management
a. Imposition of longline closed area north of Hawaii
b. Status of the lawsuit
6. Pacific Fishery Management Council's Highly Migratory Species Fishery Management Plan
7. Stock assessment of pelagic management unit species
8. International
a. Multilateral High Level Conference 6
b. International Pelagic Shark Workshop
c. Kiribati-Spain fishing agreement
d. National Plan of Action—fishing capacity
9. Recreational Fisheries Data Task Force

8:30 a.m. Thursday, February 24, 2000

G. Draft Coral Reef Ecosystem FMP/ NWHI Fishery Concerns (conclude discussion and recommendations)

H. Precious corals fishery

1. Status of framework amendment

Review of Public Scoping Comments on EIS Alternatives

1. Bottomfish FMP
2. Crustaceans FMP
3. Precious corals FMP
4. Public scoping hearing on precious corals EIS alternatives

The EIS will discuss the impacts of potential precious coral harvest on the human environment and consider alternatives for a number of management measures. Alternatives will be assessed for impacts on essential fish habitat, target and non-target species of fish, discarded fish, marine mammals (Hawaiian monk seals and cetaceans), and other protected species present in the western Pacific ecosystem. In addition, the environmental consequences section will contain an analysis of socio-economic impacts of the fishery on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market the fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

J. Addition of CNMI and Unincorporated Islands/Atolls to Bottomfish, Crustaceans, and Precious Corals FMPs

1. Review of status
2. Public scoping hearing

The Council intends to develop amendments to the Bottomfish FMP, Crustaceans FMP, and Precious Coral FMP which will consider a range of

alternatives and impacts for management of bottomfish, crustacean and precious coral fisheries in the Pacific Remote Island Areas (PRIAs) and CNMI. The PRIAs are defined as Howland Island, Jarvis Island, Wake Island, Midway Island, Palmyra Atoll, Kingman Reef, and Johnston Atoll.

The Council is evaluating the need to amend the bottomfish, crustacean and precious corals FMPs to better achieve the management objectives of these FMPs. Currently, no Federal regulations are in place to manage the bottomfish, crustacean and precious coral fishery resources in the EEZ waters surrounding the CNMI. There are also no Federal regulations for the bottomfish and crustacean fisheries for the EEZ waters surrounding the Pacific Remote Island Areas (PRIAs). The amendments will consider a wide range of management alternatives to address data shortfalls and possible impacts from the bottomfish, crustacean, and precious coral fisheries in the PRIAs and the CNMI. The Council seeks to solicit public comment and input on a wide range of management alternatives including, but not limited to, the following: Federal permit and data reporting requirements; limited access; vessel monitoring systems; observer program; closed season; closed areas; gear restrictions; size limits; catch quotas; and prohibitions on the use of destructive fishing techniques, including the use of explosives, poisons, bottomset gill-nets, bottom trawls, and tangle nets.

K. Limited Entry Permits for Community Demonstration Projects

L. Other business

Although non-emergency issues not contained in this agenda may come before the SSC for discussion, those issues may not be the subject of formal SSC action during this meeting. SSC action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 1801 *et seq.*

Dated: February 8, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–3282 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 29
Friday, February 11, 2000

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

Public Listing of Additional Commercial Inventory Added as a Result of a Challenge Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

AGENCY: Department of Agriculture, Office of the Chief Financial Officer.

ACTION: Notice of additional commercial inventory added as a result of a challenge.

SUMMARY: The ''Federal Activities Inventory Reform Act of 1998'' (Pub. L. 105–270) (''FAIR Act'') requires that agencies making changes to their inventory as a result of a challenge must make the change available to the public via the publication of a notice in the **Federal Register**

The Department of Agriculture, Office of the Chief Financial Officer hereby announces that additional commercial inventories are available to the public and are listed below: Departmental Administration (DA), Contact: George W. Aldaya, Washington, D.C. 20250, (202) 720–3937

Function code	FTE	State	Reason code	FY first appeared on FAIR list
T804—Architect and Engineering	8	DC	A	1999
W826—System Design & Programming Services	2	DC	A	1999
W999—Other ADP Functions	2	DC	A	1999
W000A—ADP Management	1	DC	A	1999
Grain Inspection, Packers & Stockyards Administration (GIPSA), Contact: Bob Soderstrom, Washington, D.C. 20250, (202) 720–0231.				

Function code	FTE	State	Reason code	FY first appeared on FAIR list
A000C—ADP Support	16	DC	B	1999
	2	GA	B	1999
	2	IA	B	1999
	2	CO	B	1999
	1	LA	B	1999
	1	TX	B	1999
	1	OH	B	1999
	3	MO	B	1999

Richard M. Guyer,
FAIR Act Coordinator.
[FR Doc. 00–3264 Filed 2–10–00; 8:45 am]
BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Forest Service

Baylor Park Timber Blowdown Analysis, White River National Forest; Garfield County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Baylor Park Area was affected by a windthrow event that blew down Engelmann spruce, subalpine fir, and aspen trees on about 2,000–3,000 acres, on August 18th, 1999. The affected area is located on the Sopris and Rifle Range Districts of the White River National Forest. The area contains mature and overmature Engelmann spruce and with an endemic population of spruce beetle. The purpose of and need for this project is to treat the blowdown and damaged area to prevent and control insect infestations. The spruce beetle is the most serious pest of Engelmann spruce. It is restricted largely to mature and overmature spruce, and epidemics have occurred throughout history. One of the most damaging outbreaks was in Colorado from 1939 to 1951, when beetles killed nearly 6 billion board feet of standing spruce. Damaging attacks have been largely associated with extensive windthrow, where downed trees provided an ample food supply for a rapid buildup of beetle populations. The beetle progeny then emerge to attack living trees, but if downed material is

not available, then standing trees may be attacked. Large, overmature trees are attacked first, but if an infestation persists, beetles will attack and kill smaller trees after the large trees in the stand are killed.

Proposed Action is to remove and/or treat damaged or windthrown trees, by use of salvage sales and other treatment methods. Other treatment methods include but are not limited to: bark peeling, pile and burning and prescribed fire, to reduce the risk of insect infestation outbreaks. In addition, the proposal would salvage or treat Engelmann spruce trees affected by spruce beetles in the analysis area. The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to determine to what extent, if any, that timber sale salvage operations or other methods of treatment, of Engelmann spruce, sub alpine fir and aspen are to occur.

DATE: Comments concerning the scope of the analysis should be received in writing on or before March 13, 2000.

ADDRESSES: Send written comments to Richard L. Doak, Acting District Ranger, Sopris Ranger District, White River National Forest, PO Box 309, Carbondale, CO 81623. The Forest Supervisor Martha J. Ketelle, P.O. Box 948, Glenwood Springs, CO 81601 is the Responsible Official for the Environmental Impact Statement and Record of Decision.

FOR FURTHER INFORMATION CONTACT: Janice Spencer, Project Coordinator, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81601.

SUPPLEMENTARY INFORMATION: Due to the difficulty in performing cultural surveys, the close proximity of wetlands, and potential of a roadless area entry to treat the down and damaged timber, An Environmental Impact Statement (EIS) is required as per Forest Service Handbook 1909.15, Section 20.6. The intent of the EIS is to determine to what extent, if any, that timber sale salvage operations or other methods of treatment, of Engelmann spruce, subalpine fir and aspen are to occur. These trees were damaged during a wind event that occurred on August 18, 1999 in the Baylor Park area. The blowdown occurred over an area of approximately 2,000–3,000 acres on the Sopris and Rifle Ranger Districts of the White River National Forest. The proposed action will be consistent with programmatic management direction contained in the Rocky Mountain Regional Guide for Standards and Guidelines (1983) and in the Land and Resource Management Plan for the White River National Forest (LMP, 1984). The LMP allocated the proposed timber sale area to wood fiber production and utilization of sawtimber products, with a small portion of the sale area being allocated to be managed for rangeland improvement and livestock grazing. All of the allocations allow for timber harvest to occur.

Based on internal Forest Service scoping, the preliminary issues include the effects of the proposed action on: area wildlife and wildlife habitat, recreation use and visual quality, watershed quality, wetland management, cultural resources, risk of insect infestation outbreaks, wildfire risk, and the transportation system—including possible entry into a roadless area.

Preliminary alternatives include, but are not limited to:

1. No Action, existing management activities under the current Forest Plan will continue.

2. The proposed action is to remove and/or treat damaged or windthrown trees, by use of salvage sales and other treatment methods, such as bark peeling, pile and burning and prescribed fire, in order to reduce the risk of insect infestation outbreaks. In addition, the proposal would salvage or treat Englemann spruce trees affected by spruce beetles in the analysis area.

3. Live timber will be harvested above that which was damaged, to treat all of the stands within the affected blowndown and damaged area for both silvicultural and economic reasons.

Alternatives will be carefully examined for their potential impacts on the physical, biological, and social environments so that tradeoffs are apparent to the decision maker. The decisions to be made by the Forest Supervisor, based on the pending analysis to be documented in this EIS are: Should the blowdown and damaged trees in the Baylor Park area be treated to reduce possible spruce beetle infestation? And, if so: Should road construction be allowed for timber harvest in this area? How will cultural resources be best protected?

Permits and licenses required to implement the proposed action will, or may, include the following: Consultation with U.S. Fish and Wildlife Service for compliance with Section 7 of the Threatened & Endangered Species Act; review from the Colorado Division of Wildlife, consultation with the Army Corps of Engineers, and clearance from the Colorado State Historic Preservation Office. Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested or affected by the proposed action. Public comments received during initial scoping for this project will be incorporated into this EIS. The Forest Service predicts the draft environmental impact statement will be filed during the summer of 2000 and the final environmental impact statement and record of decision during the winter of 2000. The comment period on the draft environmental impact statement will be forty-five days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, 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 at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (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.)

Dated: February 2, 2000.

Martha J. Ketelle,

Forest Supervisor.

[FR Doc. 00–3265 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–BW–M

Committee for Purchase From People Who are Blind or Severely Disabled

Procurement List Proposed Additions

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

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 13, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

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

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

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

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

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance
Air National Guard Readiness Center
Andrews AFB, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland
Janitorial/Custodial
U.S. Customs Service
Office of Investigation, East and West Wings
Building 50, JFK Airport
Jamaica, New York
NPA: Goodwill Industries of Greater New York and Northern New Jersey, Inc. Astoria, New York
Mailroom Operation
U.S. Department of State
Office of Foreign Buildings Operations
1701 North Fort Myer Drive
Arlington, Virginia
NPA: Columbia Lighthouse for the Blind, Washington, DC

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–3202 Filed 2–10–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

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

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: March 13, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, CrystalGateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 29 and December 17, and 27, 1999, the Committee for Purchase From PeopleWho Are Blind or Severely Disabled published notices (64 F.R. 66611, 70694 and 72312) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Janitorial/Custodial, The Library of Congress, Washington, DC for the following locations: James Madison Memorial, Thomas Jefferson Building, John Adams Building and Little Scholars Child Care Facility.

Comments were received from counsel for two companies: the current contractor for this service, and a new company whose president was until recently the president of the current contractor.

Both companies noted the impact on them of adding this service to the Procurement List, and questioned the capability of the nonprofit agency originally designated to perform the service. The second company also questioned whether this addition to the Procurement List met certain statutory requirements, and the role of a consultant to that nonprofit agency. This service is currently being procured under a small business set-aside, and the contracting officer has stated for the record that, if the Committee does not add the service to the Procurement List, the service will continue to be reserved for small businesses. The current contractor is no longer a small business, so it is not eligible for contracts for the service. Consequently, addition of this service to the Procurement List would not be the cause of any impact the current contractor suffers by not being able to provide the service, regardless of the size of the impact or any dependency the contractor has developed over the five years it has provided the service. Although the current contractor anticipates that its declining sales will return it to the small business category by 2001, the Committee does not consider such speculation as demonstrating severe adverse impact resulting from addition of a service to the Procurement List.

Unlike the current contractor, the other commenting company is a small business. It has not, however, been a current contractor for this service. Losing the ability to compete for the service is not considered by the Committee to constitute severe adverse impact on a company which has not developed a dependence on having the contract for the service.

The current contractor noted that loss of this service would require it to discharge a substantial number of its employees, who would collect unemployment benefits from the company, increasing its indirect rates and making it more difficult for the

company to offer competitive prices in the future. The Committee considers this impact on the company to be too speculative to constitute severe adverse impact. As for the company's employees, the Committee has authorized the nonprofit agency which will provide the service to phase in its workers with severe disabilities, preserving the jobs of the current workers while they seek employment elsewhere in the area, which is currently experiencing very low unemployment for workers without disabilities. In addition, a custodial corporation has offered to provide comparable employment opportunities, with similar pay and benefits, for workers displaced by this Procurement List addition.

On the basis of the Committee's response to a Freedom of Information Act request the current contractor filed early in the addition process, that contractor questioned whether this project would generate jobs for people with severe disabilities. The contractor also noted the lack of a technical or management proposal for the project, and other evidence addressing the capability of the nonprofit agency and its employees with disabilities to perform this service.

The Committee believes that the record now compiled fully supports the determination it has made that this service will eventually create approximately 58 work years of employment for people with severe disabilities. This record does includes a technical proposal for the service. The nonprofit agency has been found capable of performing the service by the Committee based on assessments by the central nonprofit agency concerned and the contracting officer at the Library of Congress, who has reviewed and accepted the technical proposal.

Both commenters noted that the Library of Congress buildings, particularly the Jefferson Building, contain numerous antiques and ornamental items in their elaborate interiors, which require specialized cleaning techniques and expertise. Some of these features of the buildings, however, are not within the statement of work for the service, as cleaning them is the responsibility of the Architect of the Capitol. If other such features are beyond the capability of workers with disabilities to perform, they will be handled by those workers without disabilities which the Committee's statute permits the nonprofit agency to retain on the job.

The current contractor noted that 31 Federal janitorial/custodial services with Washington, DC addresses are already on the Procurement List, some of them substantial in scope. The contractor claimed that it had been substantially impacted by some of these additions. The contractor also claimed that additional people with severe disabilities could be employed at these locations, making the addition of the service at the Library of Congress unnecessary to create jobs for these people.

The continued viability of the current contractor casts serious doubt on any contention that it has been severely impacted by previous Procurement List additions. As noted above, the current contractor would not be eligible for the next contract for this service at the Library of Congress, whether or not the Committee adds it to the Procurement List. Given the large number of people with severe disabilities in the Washington area who remain unemployed, the Committee believes there is a need to add the service at the Library of Congress to the Procurement List and thereby generate additional jobs for such individuals. Incremental addition of workers with severe disabilities to the janitorial/custodial services in Washington which have already been placed on the Procurement List will not fill this need. For the same reason, and given that the nonprofit agency has been found capable of providing the entire service, it would not be appropriate for the Committee to add just a portion of the service to the Procurement List, as the other commenter suggested.

The current contractor claimed that the fact that price proposals it reviewed show variation above and below the current price for the service shows that the nonprofit agency does not understand the work requirements for the service and thus cannot be considered capable of performing it. The Committee, however, considers these proposals to be evidence that the nonprofit agency and the Library of Congress were engaged in price negotiation, which is now the preferred method of setting a fair market price in the Committee's program, and not evidence of a lack of capability on the nonprofit agency's part.

The current contractor also claimed that the nonprofit agency must specifically identify the individuals with disabilities who will be employed on this service and demonstrate how these individuals are capable of performing the work involved in the service. The Committee does not consider this degree of specificity to be appropriate, given that commercial janitorial contractors do not so identify workers before beginning a project, and does not require this level of detail from nonprofit agencies participating in its program.

The other commenter claimed that this service does not meet the Committee's statutory requirement that 75 percent of the direct labor for the service be performed by persons with severe disabilities. The commenter noted that the requirement must be met each year the nonprofit agency performs the services, so a phase-in of people with disabilities would not be permissible. Such a phase-in, according to the commenter, would also lower the nonprofit agency's overall disabled labor percentage below the level the statute requires. The commenter misunderstands the statutory direct labor requirement, which applies to a nonprofit agency's total direct labor, not to the labor used on a specific service. However, the commenter is correct that Ability Unlimited, Inc., the nonprofit agency originally proposed to perform this service, does not currently meet the total direct labor requirement. Another qualified nonprofit agency, The Chimes, Inc., which does meet the total direct labor requirement and has been found capable of providing this service, has been designated to replace Ability Unlimited as the service provider under the Procurement List for at least one year. If Ability Unlimited meets the total direct labor requirement at that time, the service will be transferred to it. The commenter also questioned whether the price established for the service is a true fair market price. The commenter assumed, in accordance with former Committee pricing policies, that the price was based on the current price for the service, which is being provided under a contractual arrangement which is now over five years old. However, in accordance with new Committee pricing policies, the price for this service was set by negotiation between the Library of Congress and the nonprofit agency. Such a price by its nature is a fair market price, as it is an agreement at this time between a knowledgeable buyer and a seller, without regard to the price of the previous contractual arrangement.

The same commenter also questioned the use by Ability Unlimited of a for-profit janitorial firm as a consultant and materials supplier for this service. The commenter claimed that this arrangement violates the statutory requirement that a nonprofit agency's net income not inure to any individual. The commenter also indicated that the consultant firm's performance record on another Government contract made its role in connection with this service inappropriate. Again, the commenter

misinterprets the Committee's statute. The statutory language the commenter mentioned is intended to assure that non-governmental participants in the Committee's program are nonprofit corporations. Ability Unlimited and The Chimes meet that requirement, as well as a Committee policy requirement designed to assure nonprofit status and organizational independence. The Committee has examined the relationship between AbilityUnlimited and the for-profit consultant, and has received information from the president of the consultant firm that demonstrates that the firm will not profit from the relationship. In addition, the consultant's performance on its own janitorial contracts is not a dispositive factor in this instance because of the limited role the consultant would play in providing the service at issue. Furthermore, if Ability Unlimited fails to increase its total direct labor being performed by people with severe disabilities to the level required by the Committee's statute, it will not be performing this service at the Library of Congress under the Committee's program.

The following material pertains to the two services being added to the Procurement List: After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

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

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

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

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial
The Library of Congress, Washington, DC for the following buildings:
James Madison Memorial
Thomas Jefferson Building
John Adams Building
Little Scholars Child Development Center
Janitorial/Custodial
U.S. Coast Guard
Southwest Harbor Building
Southwest Harbor, Maine

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

Deletions

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

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

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

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Paper, Tabulating Machine
7530–00–249–4847
7530–00–057–9487
Pad, Parachutists' Helmet
8470–01–092–8494

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–3203 Filed 2–10–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Notice of Postponement of Final Determination in the Antidumping Duty Investigation

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

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Laurel LaCivita, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408, (202) 482–4243, and (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determination

The Department received a request pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(e)(2) to postpone its final determination to 135 days after publication of the Department's preliminary determination and to extend the imposition of provisional measures from a four-month period to not more than six months from respondent JSC Nevinnomyssky Azot, a producer/exporter of the subject merchandise.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) Our preliminary determination is affirmative, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting respondent's request and are postponing the final determination to no later than May 22, 2000, which is 135 days after the publication of the preliminary determination. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation.* Suspension of

liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3153 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From South Korea

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

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy (Kangwon Industries, Ltd. (''Kangwon'')), Brandon Farlander (Inchon Iron & Steel Co., Ltd. (''Inchon'')), or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165 (Blozy), (202) 482–0182 (Farlander), or (202) 482–3818 (Johnson).

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR part 351 (1998).

Preliminary Determination

We preliminarily determine that structural steel beams (''structural beams'') from South Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On August 3, 1999, the Department initiated antidumping duty investigations of imports of structural beams from Germany, Japan, South Korea, and Spain. *See Initiation of Antidumping Duty Investigations: Structural Steel Beams From Germany, Japan, South Korea, and Spain,* 64 FR 42084 (August 3, 1999) (''*Notice of Initiation*''). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On August 17, 1999, Northwestern Steel & Wire Company, Nucor-Yamato Steel Company, and TXI–Chaparral Steel Inc. (''petitioners'') submitted comments to the Department requesting that the scope exclude certain forklift truck mast-section non-standard I-beams. In August 1999, the Department also requested comments from petitioners and potential respondents in these investigations regarding the model matching criteria. We received comments from petitioners regarding model matching criteria.

On August 23, 1999, the United States International Trade Commission (''ITC'') informed the Department of its affirmative preliminary injury determination on imports of subject merchandise from Japan and South Korea and its negative injury determination on imports of the subject merchandise from Germany and Spain. On August 31, 1999, noting the ITC's negative injury determination concerning Germany, petitioners submitted a letter stating that a scope exclusion of forklift truck mast-section non-standard I-beams was no longer necessary as those products were imported from Germany.

On August 2, 1999, the Department issued Section A of its antidumping questionnaire to Inchon and Kangwon. On August 30, 1999, Inchon and Kangwon submitted responses to Section A of the questionnaire. Also, on August 30, 1999, we issued Sections B, C, D, and E of the antidumping questionnaire. On September 17, 1999, we issued a supplemental questionnaire on Section A. On October 25, 1999, Inchon and Kangwon submitted their Sections B, C, and D responses, and supplemental questionnaire response for Section A. On November 16, 1999, we issued a second supplemental questionnaire to Inchon and Kangwon, and on December 10, 1999, we received responses from both companies. On January 7 and 10, 2000, we issued supplemental questionnaires for Inchon and Kangwon, respectively. On January 18 and 20, 2000, we received Inchon's and Kangwon's supplemental responses, respectively. Petitioners submitted comments on Inchon's and Kangwon's questionnaire responses in September, November, and December 1999.

On September 17 and 21, 1999, Inchon and Kangwon, respectively, requested that they be excused from reporting home market resales of subject merchandise produced by unaffiliated manufacturers. Additionally, on September 17, 1999, Inchon requested that it be excused from reporting home market sales of I-beams and GI-beams. On September 28, 1999, we granted Inchon's and Kangwon's request that they not be required to report home market resales of subject merchandise produced by unaffiliated manufacturers; however, we instructed Inchon to report its home market sales of I-beams and GI-beams.

On November 2, 1999, petitioners submitted a timely request for a postponement of the preliminary determination pursuant to 19 CFR 351.205(e). On November 16, 1999, we postponed the preliminary determination until no later than February 2, 2000. *See Structural Steel Beams From South Korea and Japan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations,* 64 FR 66169 (November 24, 1999).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on January 13, 2000, Inchon and Kangwon requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Inchon and Kangwon also requested a two-month extension of the four-month limit on the imposition of provisional measures. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Inchon and Kangwon account for all known exports of the subject merchandise, and (3) no compelling reason for a denial exists, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of

carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (''Structural Steel Beams'') include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

• Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is July 1, 1998 through June 30, 1999.

Affiliation

On January 7, 2000, news reports indicated that Inchon shareholders approved a plan to merge with Kangwon. Under the proposed plan, Inchon will absorb Kangwon. Both respondents have stated that Inchon and Kangwon were separate, independent companies during the POI and that no merger discussions took place during the POI. *See, e.g.,* Kangwon's January 20, 2000 Supplemental Questionnaire Response at pages 20–21 and Inchon's January 18, 2000 Supplemental Questionnaire Response at page 13. Therefore, based on respondents' record statements that they were separate, independent companies during the POI, we preliminarily determine that the companies were unaffiliated during the POI and have treated each as a separate entity for purposes of this investigation.

Fair Value Comparisons

To determine whether sales of structural beams from Korea to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''export price and constructed export price'' and ''normal value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs (if applicable) for comparison to weighted-average NVs.

Transactions Investigated

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Since both Inchon's and Kangwon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home markets for both companies were viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Date of Sale

Inchon

For both home market and U.S. transactions, Inchon reported the invoice date as the date of sale, *i.e.,* the date when price, quantity, and material specifications are finalized, because Inchon stated that the price, quantity, and material specifications may change until the time of invoicing and shipment. Based on Inchon's reported frequency of changes in the material terms of sale for both its home market and U.S. transactions, which is business proprietary information, the Department preliminarily determines that the invoice date is the most appropriate date to use for the date of sale. This is because the frequency of changes in price and quantity between order confirmation and invoice date indicate that the essential terms of sale are not fixed until the invoice date. For a further discussion, see *Analysis for the Preliminary Determination in the Investigation of Structural Steel Beams from South Korea—Inchon Iron & Steel Company (''Preliminary Analysis Memo: Inchon''),* February 2, 2000. We note that for U.S. sales categorized as either EP or CEP transactions, it is the Department's practice to use the date of the invoice to the first unaffiliated purchaser in the United States. However, the date of sale cannot occur after the date of shipment. Therefore, when date of shipment to the first unaffiliated purchaser in the United States precedes the date of the invoice, we will use shipment date as the date of sale (*see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12935 (March 16, 1999), *citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13172–73 (March 18, 1998). Thus, for U.S. sales through: (1) Channel one (Inchon to its affiliated trading company in South Korea, Hyundai Corporation to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, to the U.S. unaffiliated customer), we used Hyundai U.S.A.'s invoice date; (2) channel two (Inchon to Hyundai Corporation to the U.S. unaffiliated customer), we used Hyundai Corporation's invoice date; and (3) channel three (Inchon to the U.S. unaffiliated customer), we used Inchon's invoice date, unless shipment occurs prior to issuing the invoice. When shipment occurs prior to issuing the invoice, we used the shipment date as the date of sale, as noted above.

Kangwon

For its direct home market transactions as well as its home market transactions through Sampyo Corporation, Kangwon's affiliated distributor, Kangwon has reported the date of shipping invoice as the date of sale, *i.e.,* the date when price and quantity are finalized. In its Supplemental Section A Questionnaire Response, Kangwon provided an estimate that for a certain percentage of sales, the material terms of sale (*i.e.,* price and quantity) change between the date of the customer's purchase inquiry and the date of shipment. Additionally, Kangwon noted that shipping invoice date is recorded as the date of sale in Kangwon's and Sampyo Corporation's accounting records. *See also Analysis for the Preliminary Determination in the Antidumping Duty Investigation of Structural Steel Beams from South Korea—Kangwon Industries, Ltd. (''Analysis Memorandum: Kangwon''),* February 2, 2000. Based on Kangwon's record statements, which are subject to verification, we preliminarily determine that shipping invoice date is the

appropriate date of sale for home market sales.

With respect to the date of sale for Kangwon's U.S. transactions, in its original Section A Questionnaire Response, Kangwon stated that because the final terms of sale remain subject to change until time of shipment and because it does not record the date when a commercial invoice is issued in its sales records, it reported bill of lading date as the date of sale for all of its U.S. sales. However, in its Supplemental Section A Questionnaire Response, Kangwon clarified that the date of the tax invoice is the appropriate date of sale for U.S. channel three sales transactions. Moreover, in its Section C Questionnaire Response, despite its claims that it did not record date of commercial invoice in its sales records, Kangwon reported date of commercial invoice for its U.S. channel one and two sales transactions. Based on business proprietary information provided by Kangwon regarding the frequency of changes in material terms of sale up to the invoice date, which is subject to verification, we find that the material terms of sale are subject to change until invoice date and preliminarily determine that the appropriate date of sales are: commercial invoice date (U.S. sales channels one and two) and tax invoice date (U.S. sales channel three). *See also Analysis Memorandum: Kangwon.* Additionally, in keeping with the Department's practice (see above), where date of shipment to the first unaffiliated purchaser in the United States precedes the date of the invoice, we have used shipment date as the date of sale.

C. Home Market Sales of ASTM Grade Steel

Both respondents made a certain percentage of home market sales of structural beams manufactured to U.S. ASTM grade specifications during the POI. Petitioners allege that ASTM grade home market sales are outside the ordinary course of trade and should be excluded from the Department's analysis. *See* petitioners' December 21, 1999 submissions for Inchon and Kangwon. Petitioners maintain that in its analysis of whether sales are outside of the ordinary course of trade, the Department has weighed a variety of factors, including: the significance of the quantities sold, the existence of a ready market, the comparative volume of sales and number of buyers of the product types in question, and whether the merchandise in question was primarily destined for domestic or foreign markets, citing *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Reviews,* 56 FR 64753 (December 12, 1991) and *Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part,* 54 FR 13403, 13404 (April 3, 1998). Petitioners note that in *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review* (*''Indian Pipe and Tube''*), 57 FR 54360, 54362 (November 18, 1992), the Department examined such factors as identified above and found that the Indian respondent's home market ASTM grade pipe sales were outside of the ordinary course of trade. Petitioners assert that a similar fact pattern exists for Inchon's and Kangwon's home market sales of ASTM grade merchandise and, consequently, argue that the Department should exclude respondents' home market sales of ASTM-grade subject merchandise. In response to petitioners' arguments, Kangwon and Inchon have argued that their sales of ASTM grade merchandise are within the ordinary course of trade because of the considerable number of buyers, the specific requests for ASTM grade merchandise, and the insignificant price differences between ASTM grade and non-ASTM grade merchandise, citing *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand;* Final Results of Antidumping Duty Administrative Review*(''Thai Pipe and Tube''),* 61 FR 1328, 1330–1331 (January 19, 1996).

Consistent with *Indian Pipe and Tube* and *Thai Pipe and Tube*, for this preliminary determination, we have examined: (1) The different standards and product uses of ASTM and JIS structural beams; (2) the comparative volume of sales and number of buyers of ASTM and JIS structural beams in the home market; (3) the price differentials between ASTM and JIS structural beams sold in the home market; and (4) whether ASTM structural beams sold in the home market consisted of production overruns or seconds. We find insufficient information to suggest that ASTM grade structural steel beams sold in the Korean home market are outside the ordinary course of trade.

Regarding the different standards and product uses of ASTM and JIS structural beams, we find that they generally possess the same mechanical and physical characteristics, and are used for the same applications. The only difference, as noted by petitioners, is the weight tolerance. However, this difference has minimal to no effect on the application or the desirability of either product. While respondents have stated that the majority of ASTM structural beams purchased in the home market were used to construct products for export, the fact that ASTM structural beams purchased in the home market are ultimately destined for use outside of Korea is not, in this case, of import to our analysis of whether these sales have been made within the ordinary course of trade, given the other circumstances of these sales as discussed below. In fact, the record indicates that ASTM structural beams are consumed in the home market, indicating that there is a ready market for ASTM structural beams in the home market. Regarding the comparative volume of sales and number of buyers of ASTM and JIS structural beams in the home market, we do not find that the relatively small number of sales of ASTM structural beams in the home market (as a percentage, in comparison to respondents' total volume of structural beams in the home market) alone suggests that the circumstances surrounding respondents' sales of ASTM structural beams in the home market are outside the ordinary course of trade. For both respondents, there was a significant level of ASTM sales activity as evidenced by the fact that there were a significant number of actual sales of ASTM structural beams to multiple customers in the home market. This differs from *Indian Pipe and Tube*, in which ASTM grade material was sold to only two customers. Regarding the price differentials between ASTM and JIS structural steel beams sold in the home market, we find there is a minimal difference between ASTM and JIS structural steel beams sold in the home market, while in *Indian Pipe and Tube* we noted that there was a wide disparity in sales prices between ASTM and Indian Standard pipe. Regarding whether ASTM structural steel beams sold in the home market consisted of production overruns, we find no evidence that the ASTM grade structural steel beams sold in the home market are production overruns. Whereas in *Indian Pipe and Tube*, regarding overruns, the respondent stated, in the original investigation, that the ASTM sales were cost overruns, and no additional evidence had been offered to counter this information for the review segment of that proceeding. Therefore, based on the facts of the record, for both respondents, we preliminarily determine that the ASTM sales in question are within the ordinary course of trade. *See also Preliminary Analysis*

Memo: Inchon and *Analysis Memorandum: Kangwon*.

D. Home Market Sales of Merchandise Supplied by an Unaffiliated Producer

In their original Section A Questionnaire responses, Inchon and Kangwon reported that they resold subject merchandise in the home market purchased from an unaffiliated manufacturer and requested that they be excused from reporting these resales. Based on respondents' statements on the record, including the statement that neither company sold subject merchandise produced by an unaffiliated manufacturer in the United States during the POI, we determined that respondents should be excused from reporting home market resales of subject merchandise produced by an unaffiliated manufacturer. *See Memorandum to the File: Request to Not Report Certain Sales* (September 28, 1999).

E. Arm's Length Test

Kangwon and Inchon

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and, for Kangwon, packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). For results of the arm's length test, see *Analysis Memorandum: Kangwon* and *Preliminary Analysis Memo: Inchon.*

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 2, 1999 questionnaire.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this investigation, both respondents have classified their sales as EP sales.

Notwithstanding the above definitions, there are situations where we have treated certain transactions as EP sales when a U.S. affiliate is involved in the U.S. sales transactions. However, the Department normally treats sales through an agent in the United States as CEP sales unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States*, Slip Op. 98–82 at 6 (CIT June 23, 1998). The Department has stated that, (w)here the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or provides customer support, we treat the transactions as CEP sales,'' citing, *e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 63 FR 12725, 12738 (March 16, 1998).

Inchon

Inchon identified three channels of distribution for U.S. sales. For U.S. sales channel one (*i.e.,* Inchon sales through Hyundai Corporation, Inchon's affiliated trading company in South Korea, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer), channel two (*i.e.,* Inchon sales through Hyundai Corporation, mentioned above, to an unaffiliated customer in the United States) and channel three (*i.e.,* Inchon sales to an unaffiliated trading customer for export to the United States), we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated.

We note that petitioners have argued that sales through channel one should be treated as CEP sales; however, as noted above, we preliminarily disagree based on the information on the record at this time.

Inchon claimed that all of its U.S. sales of subject merchandise are EP sales, including those sales made prior to importation through Hyundai U.S.A., Hyundai Corporation's wholly-owned U.S. subsidiary (*i.e.,* channel one sales). In looking at the channel one sales, we preliminarily agree that all three factors of our test are met for channel one sales. First, the merchandise is usually shipped directly from Inchon to the U.S. customer without Hyundai U.S.A. taking the merchandise into physical inventory. Moreover, this is the customary commercial channel between the parties. Thus, the first two factors of our test are met. Regarding the third factor, Inchon claims that Hyundai U.S.A. does not have the authority to independently solicit, negotiate, or

approve sales to Inchon's U.S. customers. Also, Inchon claims that Hyundai U.S.A. does not provide customer support to Inchon's U.S. customers. In considering the third of the three factors to determine whether certain sales warrant classification as EP sales, we preliminarily determine that the affiliated purchaser in the United States, Hyundai U.S.A., acted as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer and that its sales activities are merely ancillary.

In examining the third factor of our analysis in detail to determine whether certain sales warrant classification as EP sales, we note the following. First, Inchon states that it solicits and negotiates sales, and approves its U.S. sales prices and that Hyundai U.S.A. does not perform any of these functions. This contrasts with our analysis for Inchon in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea (''Stainless Steel Sheet and Strip in Coil from Korea'')*, 64 FR 30664, 30686 (June 8, 1999), where the record contained information that Hyundai U.S.A. had solicited sales, both with and without Inchon employees. The record in the present case indicates that Inchon personnel, and not those of Hyundai U.S.A., call on U.S. customers. Although Hyundai U.S.A. personnel attended meetings with U.S. customers, they only did so in an observational capacity and in the company of Inchon personnel. Thus, Hyundai U.S.A. personnel did not solicit or negotiate any sales, nor did they even independently meet with Inchon's customers. This contrasts with *Stainless Steel Sheet and Strip in Coil from Korea*, where we found that Hyundai U.S.A. employees had made sales calls without Inchon employees. Second, Inchon states that it bears the credit risk if a U.S. customer does not remit payment to Hyundai U.S.A., but that, during the POI, there were no instances of a U.S. customer not paying Hyundai U.S.A. This contrasts with the *Stainless Steel Sheet and Strip in Coil from Korea,* where the record contained specific evidence that Hyundai U.S.A. was bearing the credit risk. Third, we note that Inchon reported post-sale warehousing at the U.S. port prior to delivery to the U.S. customer. We note that warehousing is not automatically indicative that the U.S. sales should be classified as CEP transactions. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy,* 63 FR 40422, 40425 (July 29, 1998). Thus, based on the above record, we preliminarily determine that Inchon's U.S. sales of structural steel beams, in which Hyundai U.S.A. was involved in the sales process, reported as EP sales, qualify as EP sales.

We based EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign wharfage, international freight, marine insurance, U.S. warehousing, U.S. loading, U.S. customs duty, and U.S. wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Preliminary Analysis Memo: Inchon.*

Kangwon

Kangwon identified three channels of distribution for U.S. sales. In channel one, Kangwon sold directly to the U.S. customers. In channel two, Kangwon sold to the U.S. customers through its affiliated distributor, Sampyo Corporation. Additionally, for a certain percentage of U.S. channel one and two sales, Kangwon reported that Sampyo America, a subsidiary of Kangwon, relays pricing information and sales order information between Kangwon and its U.S. customers. In channel three, Kangwon sold directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. For U.S. sales channel three, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. channel one and two sales, including those for which Kangwon has reported that Sampyo America had a role in the sales process, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. In determining that channel one and two sales in which Sampyo America had a role should be treated as EP, we applied our three factor test, described above.

In determining that channel one and two sales in which Sampyo America had a role should be treated as EP, we applied our three factor test described above. The record indicates that in all instances Kangwon's channel one and two sales were shipped directly from the manufacturer to the unaffiliated U.S. customer and that the reported U.S. sales were made in the customary commercial channel, thereby satisfying the first two factors for EP sales. In determining, for those U.S. sales for which Kangwon has indicated that Sampyo America participated in the sales process, whether the U.S. affiliate acted solely as a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. customer, we reviewed the selling functions performed by Sampyo America and the sales process for these sales.

Kangwon reported that Sampyo America's only participation in the sales negotiation process for U.S. channel one and two sales is to relay pricing information and sales order information between Kangwon and its U.S. customers. Kangwon maintains that all U.S. sales are negotiated and approved by Kangwon's Export Department. Kangwon reported that for a certain percentage of sales, Kangwon rejected the terms of an order forwarded by Sampyo America. In addition to forwarding inquiries and confirmations to and from the customer and Kangwon, Kangwon stated that employees of Sampyo America also undertook business trips, at the instruction and control of Kangwon and by Kangwon employees, to meet with Kangwon's U.S. customers and provided general market research information for both subject and non-subject merchandise to Kangwon. Consequently, because Sampyo America's function for certain of Kangwon's U.S. channel one and two sales is limited to relaying pricing information and sales order information between Kangwon and its U.S. customers, we preliminarily determine that Kangwon's U.S. sales of structural beams, in which Sampyo America was involved in the sales process, reported as EP sales, qualify as EP sales. For a further discussion of this issue, see *Analysis Memorandum: Kangwon.*

We based EP on the packed prices to unaffiliated purchasers in the United States. Where appropriate, we deducted billing adjustments and price discounts from the gross unit price. We made deductions for foreign inland freight (plant to distribution warehouse), warehousing expense, foreign inland freight (warehouse to port of exportation), brokerage and handling,

ocean freight (where applicable), marine insurance (where applicable), U.S. brokerage charges (where applicable) and U.S. Customs duties (where applicable) in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Analysis Memorandum: Kangwon.*

Normal Value

After testing home market viability and whether home market sales were made at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Cost of Production (''COP'') Analysis

Based on the cost allegations submitted by petitioners in their July 7, 1999 petition, the Department found reasonable grounds to believe or suspect that Inchon and Kangwon had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Inchon and Kangwon made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Notice of Initiation.* We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses, including interest expenses, research and development and packing costs. We relied on the COP and CV data submitted by Inchon and Kangwon, except as discussed below, where the submitted costs were not appropriately quantified or valued.

We made company-specific adjustments to the reported COP as follows:

Inchon

1. We adjusted Inchon's general and administrative expense ratio to include or exclude, as appropriate, certain non-operating items.

Kangwon

1. We adjusted Kangwon's reported cost of scrap purchased from affiliated suppliers to account for the differences between the market price of scrap and the transfer price.

2. We recalculated Kangwon's general and administrative (''G&A'') expense ratio by excluding gain from assets contributed, bad debt allowance, additional income tax, and miscellaneous gains and losses, and dividing the recalculated G&A expenses by cost of goods sold net of packing expenses.

3. We adjusted Kangwon's interest expense ratio by adding back gain on exemption of debt and dividing the recalculated interest expense by cost of goods sold net of packing expenses.

B. Test of Home Market Sales Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts and rebates, other selling expenses, and, for Kangwon, home market packing.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, G&A expenses, including interest expenses, research and development expenses, U.S. packing costs (for Kangwon), direct and indirect selling expenses, and profit. We made adjustments to each respondent's reported cost as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based selling, general and administrative expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. Both Inchon and Kangwon have reported sales quantities on a theoretical weight basis (as recorded in their internal books) and maintain that actual weight is recorded for only a limited number of sales. However, petitioners argue that the JIS and ASTM standards vary in their level of acceptable weight variances; thus, petitioners argue that respondents have effectively overreported the actual quantity of home market sales by approximately 4 percent and the actual quantity of U.S. sales by only 2.5 percent, thereby distorting reported unit prices. Consequently, petitioners have requested that home market prices be adjusted upwards by 1.5 percent. In the Department's supplemental questionnaires for Inchon and Kangwon (issued in January 2000), we requested that respondents provide actual weights for sample sales of subject merchandise in the home market and U.S. (where available). The data provided by respondents indicate that there are no significant differences between JIS and ASTM actual and theoretical weights. Therefore, we preliminarily determine that no adjustment is warranted.

Inchon

We calculated NV based on prices to unaffiliated home market customers. We made a deduction for inland freight from the plant to the customer. We made billing adjustments, where appropriate. We made circumstance-of-sale (''COS'') adjustments based on differences in direct selling expenses (*i.e.,* credit, warranty expense, and interest revenue) incurred on U.S. and home market sales, where appropriate.

Where appropriate, we deducted from NV the amount of home market indirect selling expenses capped by the amount of the U.S. commissions. Normally, we deduct home market packing costs and add U.S. packing costs, in accordance with section 773(a)(6); however, in the instant case, we did not deduct home market packing costs nor add U.S. packing costs because Inchon has stated that there is no difference between its home market and U.S. packing costs, and has included packing costs in its COP.

Kangwon

We calculated NV for comparison to EP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight-plant to distribution warehouse, warehousing expense, inland freight-warehouse to customer. In its questionnaire responses, Kangwon reported that Kangwon pays Sampyo America a set per metric ton fee for all sales by Kangwon through U.S. sales channels one and two regardless of the extent to which Sampyo America was involved in relaying sales information for these sales, up to a set amount. Petitioners have argued that since the fees received by Sampyo America vary with sales levels, the Department should treat the fees as a direct selling expense. We note that the fees in question constitute a type of commission paid by Kangwon to Sampyo America. The Department's questionnaire specifically instructs respondent not to ''report commissions paid to affiliated selling agents unless there is a compelling reason that you cannot report an affiliated agent's actual expenses.'' See Department's August 30, 1999 Questionnaire at page C–28. In this case, Kangwon has reported these fees in its calculation of indirect selling expenses incurred in the United States. Therefore, we preliminarily determine that no COS adjustment is appropriate for the fees in question. We made a COS adjustment based on differences in direct selling expenses (*i.e.,* credit) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present review, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses for each respondent.

Inchon

In the home market, Inchon reported two sales channels: (1) To unaffiliated distributors; and (2) to affiliated and unaffiliated end-users. We examined the selling functions performed for both channels. These selling functions included inventory maintenance, freight and delivery arrangements, warranty service, and credit risk. Because there are no differences between the selling functions on sales made to either unaffiliated distributors or affiliated and unaffiliated end-users in the home market, sales to both of these customer categories represent a similar stage of marketing. Therefore, we preliminarily conclude that sales to unaffiliated distributors and affiliated and unaffiliated end-users constitute one LOT in the home market.

For its EP sales in the U.S. market, Inchon reported three sales channels: (1) Channel one—Inchon sales through Hyundai Corporation, Inchon's affiliated trading company, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer; (2) channel two—Inchon sales through Hyundai Corporation, to an unaffiliated customer; and (3) channel three—Inchon sales to an unaffiliated trading company. Inchon's U.S. customers for all three sales channels are trading companies and distributors. We examined the selling functions performed for each of the three U.S. sales channels. These selling functions included warranty service, freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of post-sale warehousing for certain sales in channel one, selling functions performed in the three sales channels were the same. Thus, sales to these customer categories represent a similar stage of marketing. Therefore, we preliminarily determine that Inchon provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Further, we preliminarily conclude that because the U.S. LOT and the home market LOT included similar selling functions, these sales are made at the same LOT. Therefore, a LOT adjustment for Inchon is not appropriate.

Kangwon

Kangwon did not claim a LOT adjustment. Kangwon identified two channels of distribution in the home market: (1) Sales made by Kangwon directly to its customers; and (2) sales made by Kangwon through Sampyo Corporation, to customers. Both Kangwon and Sampyo Corporation made sales to affiliated and unaffiliated industrial end-users and distributors. In addition, Kangwon made a limited quantity of sales to government entities. For both reported channels, Kangwon maintains that the sales process and selling functions performed by Kangwon are identical. Moreover,

Kangwon explained that the only differences between Kangwon's sales to government end-users and its sales to end-users and distributors are that most sales to the latter are made through Sampyo Corporation and that different terms of sale and terms of delivery are offered to government entities. We reviewed the selling functions and services performed by either Kangwon or Sampyo Corporation and preliminarily determined that for both channels of distribution and all classes of customer, the selling functions and services offered are similar. *See Analysis Memorandum: Kangwon.* Consequently, because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we preliminarily determine that there exists one LOT for Kangwon's home market sales.

Kangwon identified three channels of distribution in the U.S. market: (1) Sales made by Kangwon directly to U.S. distributors; (2) sales made by Kangwon to U.S. distributors through Sampyo Corporation; and (3) sales made by Kangwon to unaffiliated Korean trading companies for shipment to the United States. In addition, Kangwon reported that its U.S.-based subsidiary, Sampyo America, was involved in the sales process for certain U.S. channel one and two sales. However, pursuant to our analysis above, such sales were treated as EP sales. Kangwon claimed one LOT in the U.S. market. The Department examined the claimed selling functions performed by Kangwon, Sampyo Corporation, and Sampyo America for all U.S. sales. These selling functions included warranty, freight and delivery arrangements, and invoicing customers.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and EP sales in the U.S. market, we preliminarily find that EP sales to all three channels of distribution are made at the same stage in the marketing process and involve identical selling functions. Therefore, we preliminarily determine that Kangwon, Sampyo Corporation, and Sampyo America provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily determine that there is not a significant difference in the selling functions performed in both markets, and thus, a LOT adjustment is not appropriate. For a further discussion, see *Analysis Memorandum:* Kangwon.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see* Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

The All-Others Rate

Section 735(c)(5) of the Act provides that the estimated all-others rate is the amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776 of the Act. Therefore, for this preliminary determination, we have calculated the all-other rate based on the weighted average of the estimated weighted average dumping margins for both Kangwon and Inchon.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted average margin (percent)
Inchon	14.95
Kangwon	47.55
All-Others	30.30

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held 57 days after the publication of the preliminary determination, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number;

(2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the date of publication in the **Federal Register** of our preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3260 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From Japan

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

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita Chen or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0409 and (202) 482–3434, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351 (April 1998).

Preliminary Determination

We preliminarily determine that Structural Steel Beams (''Structurals'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. For all the following companies, the Department has used adverse facts available for their estimated margin: Nippon Steel Corporation (''NSC''); Kawasaki Steel Corporation (''Kawasaki''); NKK Corporation (''NKK''); Sumitomo Metals Industries, Ltd. (''Sumitomo''); Toa Steel Co., Ltd. (''Toa''); Tokyo Steel Manufacturing Co., Ltd. (''Tokyo Steel'') and Topy Industries, Limited (''Topy''). However, the Department is not assigning a margin to Yamato Kogyo Co. Ltd. *See* Case History section.

Case History

On August 3, 1999, the Department initiated antidumping duty investigations of imports of structural steel beams from Germany, Japan, South Korea, and Spain (Notice of Initiation of Antidumping Investigations: Structural Steel Beams from Germany, Japan, South Korea, and Spain (64 FR 42084 (August 3, 1999)). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On August 8, 1999, Northwestern Steel & Wire Company, Nucor-Yamato Steel Company, TXI-Chaparral Steel Co., and the United Steelworkers of America AFL–CIO) (''petitioners'') submitted comments to the Department that proposed model match criteria. Petitioners stated that they provided the factors (i.e., shape, size, grade yield strength, weight, dimension and processing) upon which price distinctions in the foreign market should be based because they reflect the physical differences of the products. The petitioners stated that they listed these products in general order of importance. Also, on August 17, 1999, petitioners submitted comments to the Department requesting that the scope exclude certain forklift truck mast-section non-standard I-beams.

On August 13, 1999, petitioners revised their proposed model matching criteria for Japanese products. In this letter, petitioners provided information purporting to demonstrate that, based on yield strength, the new home market grades of the subject merchandise are a more appropriate match to the products being sold in the United States than the grades identified in the petition. Further, on August 25, 1999, petitioners submitted comments to the Department's draft model match characteristics. First, petitioners stated that the Department should include a classification for ''Other Doubly-Symmetric Shapes (i.e., Special Sections)'' at the end of the depth section category. Second, petitioners stated that the Department should match beam types in the following order: M beams, wide flange beams, standard beams, H piles and other doubly-symmetric shapes.

On August 23, 1999, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Japan and South Korea and its negative injury determination on imports of subject merchandise from Germany and Spain. On August 31, 1999, noting the ITC's negative injury determination concerning Germany, petitioners submitted a letter stating that a scope exclusion of forklift truck mast-section non-standard I-beams was no longer necessary as those products were imported from Germany. Additionally, on September 1, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being threatened with material injured by reason of imports of the subject merchandise from Japan (64 FR 47866).

On August 2, 1999, the Department issued Section A of its antidumping duty questionnaire to NSC, Kawasaki, NKK, Sumitomo, Toa, Tokyo Steel, Topy, and Yamato Kogyo Co. Ltd. (''Yamato''). On August 11, 1999, the Department received NKK and Toa's joint response to Question 1 of Section A. This response stated that Toa is a subsidiary company of NKK now under liquidation, and that Toa did not make any sales of the subject merchandise during the POI.[1] On August 12, 1999, the Department received Sumitomo's response to Question 1 of Section A. On August 13 and 19, 1999, the Department received Tokyo Steel's response to Question 1 of Section A. Topy submitted its response to Question 1 of Section A on August 16 and 20, 1999. Yamato submitted its response to Question 1 of Section A on August 16, 1999, in which Yamato stated that it did not make any sales of subject merchandise to the United States during the POI. On August 18, 1999, NSC informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 20, 1999, Kawasaki informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 24, 1999, NKK informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 30, 1999, the Department informed Yamato that it will not be part of the investigation because it did not

[1] Based on this information, the Department considers NKK and Toa to be a single entity and will instruct Customs to treat them as such.

have sales of subject merchandise during the POI.

On August 30, 1999, the Department issued Sections B-E of its antidumping duty questionnaire to Sumitomo, Tokyo Steel, and Topy. On September 3, 1999, the Department returned both Tokyo Steel and Topy's Section A response because both companies failed to correctly submit their respective Section A responses in accordance with the Department's regulations. On September 10, 1999, Tokyo Steel resubmitted its Section A response. Topy resubmitted its Section A response on September 13, 1999. On September 14, 1999, we provided additional instructions and filing procedures to both Tokyo Steel and Topy. Additionally, on September 14th, we sent a letter to Tokyo Steel informing it that all submissions must be served to APO parties. Petitioners requested on September 15, 1999 that the Department reject Tokyo Steel's Section A response because of non-conformity with the Department's regulations. Also, on September 15, 1999, Sumitomo informed the Department that it will not be participating in the Structural Steel Beams investigation. On September 21, 1999, petitioners filed comments on Tokyo Steel and Topy's Section A questionnaire response. OnSeptember 30, 1999, we issued supplemental Section A questionnaires to Tokyo Steel and Topy. Additionally, on September 30th, we provided further explanation to Tokyo Steel on the Department's filing procedures.

On October 7, 1999, Tokyo Steel informed the Department by fax that it was not possible to provide all of the data requested in Sections B-E of the questionnaire due to its voluminous nature. We received Tokyo Steel and Topy's supplemental Section A questionnaire responses on October 14, 1999. On October 15, 1999, we extended Tokyo Steel's deadline for submitting its Sections B-E responses from October 7, 1999 to October 22, 1999. On October 20, 1999, we extended Topy's deadline for submitting its Sections B-E responses from October 7, 1999 to October 27, 1999. Petitioners stated on October 20, 1999 that should Tokyo Steel and Topy fail to respond to the Department's questionnaire in its entirety and by the extended deadlines, the Department should cease granting leniency and apply adverse fact available. On October 22, 1999, the Department received Tokyo Steel's responses to Sections B, C, and D of the questionnaire. However, within the response Tokyo Steel again stated that it was impossible to provide the Department with all of the requested data, due to the voluminous nature of the requested data. On October 27, 1999, petitioners submitted a letter requesting that the Department reject the non-conforming and incomplete response of Tokyo Steel to Sections B-E. On November 5, 1999, Tokyo Steel submitted a letter stating that the petitioners' letter of October 27th maligns the company and Tokyo Steel had, to the best of its ability, responded honestly to the Department's questionnaire. Further, on November 12, 1999, petitioners submitted a letter similar to its August 13th letter providing more appropriate price-to-price dumping margin comparisons for certain NSC Japanese products. Moreover, on January 14, 2000, petitioners submitted a letter providing reasons why its revised price-to-price margins are an appropriate basis for facts available.

Scope of Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (''Structural Steel Beams'') include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The Period of Investigation (''POI'') is July 1, 1998 through June 30, 1999.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

In this case, NSC, Kawasaki, NKK, and Sumitomo indicated that they would not participate in the Department's investigation and did not provide the Department with information requested and needed to calculate a dumping margin. Therefore, we determine that NSC, Kawasaki, NKK/Toa, and Sumitomo withheld information requested by the Department. Accordingly, the Department finds it necessary to use the facts otherwise available for these respondents in accordance with section 776(a)(2)(A) of the Act.

With respect to Tokyo Steel and Topy, both companies responded to Section A of the Department's questionnaire. However, both companies failed to completely respond to Sections B–D of the Department's questionnaire. On October 7th, Tokyo Steel informed the Department it was not possible to provide all of the requested data for sections B–E of the questionnaire due to the voluminous nature of the request. On October 15, 1999 and October 20, 1999, the Department extended the deadline for submitting sections B–E of its questionnaire for both Tokyo Steel and Topy, respectively. In this letter, pursuant to section 782(d) of the Act, because incomplete responses are considered deficient, the Department warned respondents that such responses could result in use of the facts available. On October 22, 1999, the Department received Tokyo Steel's response to Sections B, C, and D of the questionnaire. However, in that response Tokyo Steel stated that due to the voluminous nature of the requested data it could not provide the Department with all the requested data and instead provided the Department with only selected information. Therefore, the Department determines that Tokyo Steel failed to provide the necessary information in the form or manner requested. Because the

Department is lacking complete information, we find it necessary to use the facts otherwise available for Tokyo Steel in accordance with section 776(a)(2)(B) of the Act.

Lastly, with respect to Topy, on October 20, 1999, the Department extended Topy's deadline for submitting its Sections B–D responses to October 27, 1999. However, Topy completely failed to respond to these sections of the questionnaire. Consequently, the Department finds Topy withheld requested information and that it is necessary to use the facts otherwise available in making its determination in accordance with section 776(a)(2)(A) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, Vol. I, at 870 (1994) (''SAA''). In this case, NSC, Kawasaki, NKK, and Sumitomo completely failed to respond to the Department's questionnaires. Further, the companies indicated that they would not participate in the Department's investigation. Because of the companies' complete lack of participation in this investigation, we find that the companies failed to cooperate to the best of their abilities. Accordingly, when selecting among the facts available, we find that the use of an adverse inference is warranted in accordance with section 776(b) of the Act.

With respect to Tokyo Steel and Topy while the companies did respond to the Department's section A questionnaires and supplemental section A questionnaires, neither company responded satisfactorily to the Department's Sections B–E questionnaires. Although Tokyo Steel did submit a response to Sections B–E, on October 22, 1999, that response was highly incomplete despite Tokyo Steel's being granted an extension and warned that the Department required a complete response. Tokyo Steel informed the Department that it was not possible to respond to its questionnaire due to the voluminous nature of the requested data, but offered no further explanation for its failure to provide complete data in light of the Department's enlargement of time for Tokyo Steel's response. Further, Topy did not respond to Sections B–E of the Department's questionnaire at all, nor did it provide any reason for its failure to respond. In light of these facts, the Department finds that Tokyo Steel and Topy failed to act to the best of their abilities to comply with the Department's requests for information under section 776(b) of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted for these companies as well.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. As adverse facts become available, the Department is assigning to NSC, Kawasaki, NKK/Toa, Sumitomo, Tokyo Steel, and Topy a dumping margin of 65.21 percent, which represents the highest margin calculated from the information placed on the record by petitioners on August 13, 1999 and November 12, 1999. As explained in detail in the ''Corroboration'' section below, we are using this information because it is a refinement of information in the petition in that it represents the best price-to-price comparison on the record. Further, the Department determines that use of this margin accomplishes the statute's aim of encouraging participation. As the SAA provides, where a party has not cooperated in a proceeding:

> Commerce * * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. SAA at 870.

In this case, information representing a better price-to-price comparison that was submitted by petitioners during the proceeding demonstrates that the dumping margins estimated in the petition may be lower than in actual practice. Therefore, use of petitioners' updated information, which results in a higher dumping margin, will ensure that parties do not obtain a more favorable result by failing to cooperate in this investigation.

Section 776(c) of the Act provides that, when the Department relies on secondary information (which includes information from the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used as probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See* Import Administration Antidumping Duty (''AD'') Investigation Initiation Checklist (July 27, 1999), for a discussion of the margin calculations in the petition. In addition, in order to determine the probative value of the margins in the petition in accordance with section 776(c) of the Act, we examined the key elements of the export price (''EP'') and normal value (''NV'') calculations on which the margins in the petition were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition are from public sources concurrent, for the most part, with the POI (e.g., interest rates, port fees, and customs duties).

In addition, shortly after the initiation of the investigation, on August 13, 1999, and again on November 12, 1999, the petitioners provided the Department with additional information for the Department's use in potential adverse facts available situations. Specifically, in the August 13th information petitioners provided a more recent price list than the one found in the petition (i.e., April 1999 versus December 1998). This new price list provided home market grades (i.e., SM490A and SM490B) that they contend are more appropriate matches for the U.S. grade (i.e., A572–50) found in the petition. Petitioners stated that the aforementioned home market grades are a more comparable match because both the home market and U.S. products have yield strengths that are more similar to each other than the home market and U.S. grades compared in the petition. Thus, petitioners believed that the new comparisons better reflect the Department's model matching criteria. After reviewing petitioners' new information, the Department agrees that it represents the best match and therefore the best price-to-price comparison currently on the record because it bases the prices used for the comparison on products with characteristics that best reflect the Department's model match criteria. Furthermore, the Department finds that the public price lists on the record do,

in fact, corroborate the prices of the new home market grades presented by petitioners.

With respect to certain other data included in the margin calculations of the petition (e.g., inland freight), neither respondents nor other interested parties provided the Department with further relevant information and the Department is aware of no other independent sources of information that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation for section 776 of the Act, at 19 CFR 351.308(c), states ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, we note that the SAA at 870 specifically states that, where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Accordingly, we find, for purposes of this preliminary determination, that the information used is sufficiently corroborated.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been assign, as the ''all others'' rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada,* 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy,* 64 FR 15458, 15459 (March 21, 1999).

We are basing the ''all others'' rate on the simple average of margins in the petition and information placed on the record by petitioners on August 13, 1999 and November 12, 1999, which is 31.98 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Kawasaki Steel Corporation	65.21
Nippon Steel Corporation	65.21
NKK Corporation/Toa Steel Co., Ltd.	65.21
Sumitomo Metals Industries, Ltd.	65.21
Tokyo Steel Manufacturing Co., Ltd.	65.21
Topy Industries, Limited	65.21
All Others	31.98

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 2, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–3261 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Hawaii; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–027. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Low-Level Beta Counter, Model GM–25–5. Manufacturer: Riso National Laboratory, Denmark. Intended Use: See notice at 64 FR 63788. November 22, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Robust design and portability for shipboard operation, (2) one-inch detector windows and (3) a background of 0.178± 0.003 counts per minute. Woods Hole Oceanographic Institution advised January 28, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–3262 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–029. *Applicant:* University of Florida, Gainesville, FL 32611–6200. *Instrument:* Fiber Raman Laser, Model FRL–1480–600. *Manufacturer:* IP Fibre Devices Ltd., United Kingdom. *Intended Use:* See notice at 64 FR 70213, December 16, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) High power output in the 300–600 mW range, (2) continuous working operation, (3) single mode output and (4) frequency output in the 1483–1484.5 nm range with an emission bandwidth between 1.0–1.5 nm. The National Institute of Standards and Technology and a domestic manufacturer of similar equipment advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Dated: February 4, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–3263 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020400A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Charter Vessel/Headboat Advisory Panel (AP).

DATES: The AP meeting is scheduled to begin at 8:00 a.m. on February 28, 2000 and will conclude by 4:00 p.m. on February 29, 2000.

ADDRESSES: The AP meeting will be held at the Radisson Riverwalk Hotel Tampa, 200 North Ashley Drive, Tampa, FL 33602; telephone: 813–223–2222.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director,; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) deferred taking action on a Draft Amendment for a Charter Vessel/Headboat Permit Moratorium (Amendment) at its January 18–21, 2000 meeting. Instead the Council has asked the AP to develop an industry proposal for revision of the current Federal permit system for charter vessels and headboats engaged in reef fish and coastal migratory pelagics fisheries in the Gulf of Mexico. The AP may consider retaining some of the alternatives for management measures considered in the Amendment, and likely will suggest other alternatives that would need to be presented at public hearings in a subsequent amendment. The Council will consider the AP's recommendations at its March 20–23, 2000 meeting in San Antonio, TX.

Copies of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agendas may come before the AP for discussion, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 22, 2000.

Dated: February 7, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–3286 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020400B]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet March 6–10, 2000. The Council meeting will begin on Tuesday, March 7, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Wednesday, March 8 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, CA 95815; telephone: (916) 922–8041.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call

2. Approve Agenda
3. Approve September and November Meeting Minutes

B. Salmon Management

1. Review of 1999 Fisheries and Summary of 2000 Stock Abundance Estimates
2. Estimate Procedures and Methodologies
3. Inseason Management Recommendations for Openings Prior to May 1
4. Preliminary Definition of 2000 Management Options
5. Oregon Coastal Natural Coho Management Review—Progress Report
6. Updates on Activities to Restore Natural Stocks
7. Adoption of 2000 Management Options for Analysis
8. Schedule of Public Hearings and Appointment of Hearings Officers
9. Adoption of 2000 Management Measures for Public Review

C. Habitat Issues

D. Coastal Pelagic Species Management

1. Update on Limited Entry Program
2. Pacific Sardine
3. Status of Plan Amendment (Squid Maximum Sustainable Yield and Bycatch)

E. Pacific Halibut Management

1. Status of Implementation of Council Recommendations
2. Results of the International Pacific Halibut Commission Annual Meeting
3. Proposed Incidental Catch in the Troll Salmon Fishery for 2000

F. Highly Migratory Species Management

1. Progress Report on the Fishery Management Plan
2. Report on International Discussions and Actions
3. Control Date for Limited Entry

G. Groundfish Management

1. Status of Federal Regulations (Including Implementation of the Emergency Rule), Exempted Fishing Permit Applications, Research Programs, and other Activities
2. Status Report on Strategic Plan
3. American Fisheries Act Measures
4. Status of Federal Setnet Programs
5. Bycatch Mortality for Rockfish
6. Groundfish Trip Limit for Pink Shrimp Fishery
7. Progress Report on Plan Amendment for Bycatch and Framework Measures

H. Administrative and Other Matters

1. Council Budget
2. Legislative Report
3. Appointments
4. Research and Data Needs and Economic Data Plan
5. Establishment of a Council Operating Procedure for E-mail
6. April 2000 Agenda

Advisory Meetings

The Salmon Advisory Subpanel will convene on Monday, March 6, at 8 a.m. and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Habitat Steering Group meets at 9 a.m. on Monday, March 6, to address issues and actions affecting habitat of fish species managed by the Council.

The Scientific and Statistical Committee will convene on Monday, March 6, at 1 p.m., and on Tuesday, March 7, at 8 a.m. to address scientific issues on the Council agenda.

The Budget Committee meets on Monday, March 6 at 1 p.m. to review the status of the 2000 Council budget and the proposed budget for 2001.

The Salmon Technical Team will convene throughout the week (Monday March 6 through Friday March 10) as necessary to address salmon management items on the Council agenda.

The Coastal Pelagic Species Advisory Subpanel will meet on Tuesday, March 7, at 1 p.m. to address coastal pelagic issues on the Council agenda.

The Enforcement Consultants meet at 6 p.m. on Tuesday, March 7, and will continue to meet as necessary through March 10 to address enforcement issues relating to Council agenda items.

The Highly Migratory Species Advisory Subpanel will meet on Wednesday, March 8 at 10 a.m. to discuss highly migratory species issues relating to Council agenda items.

Comments on Council Agenda Items will not be accepted if submitted via e-mail or internet.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 7, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–3287 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020300B]

Marine Mammals; File Nos. 675–1563, 378–1564 and P595

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that Dr. Graham A.J. Worthy (File No. 675–1563), Physiological Ecology and Bioenergetics Laboratory, Department of Marine Biology, Texas A&M University, 5001 Avenue U, Suite 105, Galveston, TX 77551; Alaska Department of Fish and Game (File No. 358–1564), Division of Wildlife Conservation, 1255 W. 8th Street, P.O. Box 25526, Juneau, AK 99802–5526, have each applied in due form for a permit to take marine mammals for purposes of scientific research; and the Whale Conservation Institute (File No. P595), 191 Weston Road, Lincoln, Massachusetts 01773, requests an amendment to Permit No. 1004.

DATES: Written or telefaxed comments must be received on or before March 13, 2000.

ADDRESSES: All applications and related documents are available for review upon written request or by appointment in the Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

File Nos. 675–1563 and 358–1564: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

File No. P595: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

File No. 675–1563: Southeast Region, NMFS, 9721 Executive Center Drive

North, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendment request are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

File No. 675–1563, Dr. Graham Worthy requests authority to take up to 30 northern fur seal (*Callorhinus ursinus*) mother/pup pairs and 30 additional pups over a 3-year period. Animals will be blood and tissue sampled and flipper tagged. Adult females will have a milk sample extracted. Activities will occur on the Pribilof Islands, Alaska.

File No. 358–1564, Alaska Department of Fish and Game (ADF&G) requests authority to take Steller sea lions (*Eumetopias jubatus*) over a 5-year period. Animals of all ages and both sexes will be taken during aerial and land-based surveys, capture and release activities that include tissue and blood sampling, tagging and attachment of scientific instruments, branding, and administering immobilizing drugs. Activities will occur in Alaska and British Columbia.

File No. P595, Whale Conservation Institute, Permit No. 1004 authorizes the Holder to import right whale tissue samples, and samples from other cetaceans, from Argentina, Mexico, Costa Rica, Ecuador, Peru, and Chile. The Holder requests an amendment to: increase the number of samples to be imported; increase the number of locations where samples are taken and imported; and extend the permit one additional year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 3, 2000.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–3284 Filed 2–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Submission for OMB Review; Comment Request Entitled Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Change Order Accounting. A request for public comments was published at 64 FR 68338,December 7, 1999. No comments were received.

DATES: Comments may be submitted on or before March 13, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents, *8,750*; responses per respondent, *18*; total annual responses, *157,500*; preparation hours per response, *.084*; and total response burden hours, *13,230*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *8,750*; hours per recordkeeper, *1.5*; total recordkeeping burden hours, *13,125*; and total burden hours *26,355*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: February 8, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–3279 Filed 2–10–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE GENERAL SERVICES ADMINISTRATION NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Submission for OMB Review; Comment Request Entitled Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification. A request for public comments was published at 64 FR 68338, December 7, 1999. No comments were received.

DATES: Comments may be submitted on or before March 13, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA, (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the number the Government uses to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center that collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers shall report a Contractor Identification Number for each successful offeror. A DUNS number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors.The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:Respondents, *50,400*; responses per respondent (rounded), *4.01*; total annual responses, *201,600*; preparation hours per response, *.0205* (averaged); and total response burden hours, *4,147*.

Obtaining Copies of proposals:

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please citeOMB Control No. 9000–0145, Use of Data UniversalNumbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: February 8, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–3280 Filed 2–10–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Improved Ordnance Storage for Marine Corps Air Station (MCAS) Yuma, AZ

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational, environmental and cost implications of improving the ordnance storage at MCAS Yuma, announces its decision to acquire and develop 1,641 acres of agricultural and residential land south of MCAS Yuma.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

Background

The Department of the Navy, pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 USC Section 4331 *et seq.*), and the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures, (40 CFR Parts 1500–1508), hereby announces its decision to acquire 1,641 acres of land south of MCAS Yuma, Arizona, for the improvement of ordnance storage and other support functions. This decision includes the following actions, which are described in more detail in the Environmental Impact Statement. The Department of the Navy will construct and operate:

(1) A Combat Aircraft Loading Area (CALA);

(2) A new station ordnance area (including ordnance loading and unloading facilities, ordnance storage magazines, support buildings, guard shacks, and a security fence);

(3) A fire station; and

(4) Compounds for Marine Wing Support Squadron (MWSS)–371 and Combat Service Support Detachment (CSSD)–16.

These improvements will provide safer handling and storage of ordnance, and less expensive and more efficient ordnance operations. The proposed action is needed to support existing training and other ongoing activities at MCAS Yuma. None of the components of the proposed action are associated with an increase in the number of mission flown at MCAS Yuma or a change in its mission. The level of flight operations is not dependent on ordnance storage capacity. MCAS Yuma's ordnance storage capacity has remained relatively constant over the last several years. All components of the proposed action have been designed based on MCAS Yuma's historic ordnance use and operation levels.

The Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for improved ordnance storage for Marine Corps Air Station Yuma, Arizona, was published in the **Federal Register** on December 17, 1996. Two public scoping meetings were held in January 1997 to allow for public comments.

The public scoping meetings were attended by a total of 20 persons, with only one person providing formal testimony; however, that person made

no specific comments which addressed the scope of the EIS. An additional 13 individuals, state, and local agencies submitted comments via letter, facsimile or electronic mail.

The Draft Environmental Impact Statement (DEIS) was distributed to agencies and officials of federal, state and local governments, citizen groups and organizations, and other interested parties including landowners within the potential acquisition area, during the week of January 25–29, 1999.

The Notice of Availability for the DEIS was published in the **Federal Register** on January 29, 1999. The DEIS was subject to public review during a 60-day public comment period. The Marine Corps also held two public hearings during the public comment period on February 17 and 23, 1999. The public hearings were held at the Ramada Inn at the Chilton Conference Center in Yuma, AZ.

Comments on the DEIS were received by letter, by oral statements provided during the public hearings, and written statements received by facsimile. Written and oral statements were received from a total of 21 commentors, including federal, state, regional, and local agencies, and private individuals. All comments received were reviewed and addressed in the FEIS.

The FEIS was distributed to the public on July 21, 1999. The public review period ended on September 30, 1999. Nineteen comments were received on the FEIS and were considered before issuing this ROD.

Alternatives Considered

NEPA and CDQ regulations require the Department of the Navy to study and evaluate a reasonable range of alternatives for accomplishing the purpose and need underlying the proposed action. The underlying purpose for improved ordnance storage at MCAS Yuma is to: (1) Eliminate the use of safety waivers associated with ordnance handling an storage at MCAS Yuma; (2) provide an ordnance storage capacity able to accommodate MCAS Yuma's annual average ordnance requirement; (3) provide space for the relocation of existing MCAS Yuma facilities; and (4) meet objectives (1) and (2) without increasing staffing requirements at MCAS Yuma.

The EIS process initially identified nine alternatives, including the No Action alternative. These included five alternatives identified in the NOI and four alternatives developed as a result of the public scoping process. Four alternatives were evaluated in detail in the EIS: the 1,641 Acre Alternative, the 1,069 Acre Alternative, the Barry M. Goldwater Range (BMGR) Alternative, and the No Action Alternative.

The 1,641 Acre Alternative involved the acquisition and development of 1,641 acres of land. This alternative was identified as the preferred alternative in the EIS. Under this alternative, the Department of Navy will acquire approximately 1,641 acres of agricultural and residential land to the south of MCAS Yuma and construct and operate the following new facilities in that area: a Combat Aircraft Loading Area (CALA), a new station ordnance area (including ordnance loading and unloading facilities, ordnance storage magazines, support buildings, guard shacks, and a security fence), a fire station, and compounds for MWSS–371 AND CSSD–16.

The new CALA and station ordnance areas are to be constructed in the western portion of the acquisition area. Most land in the acquisition area's central section will be within new Explosive Safety Quantity Distance (ESQD) arcs and will remain in agricultural production. Approximately 1,184 acres of agricultural and vacant lands within the acquisition area will not be cleared for the new military facilities. This land will be out-leased for continued agricultural use. A new fire station, MWSS–371 compound, and CSSD–16 compound will ultimately be located in the eastern third of the acquisition area. The facilities proposed for the eastern third of the acquisition area were addressed for the eastern third of the acquisition area were addressed at a programmatic level in the EIS because specific plans for their construction have not been developed. Additional evaluation under NEPA will be required prior to the construction of a new fire station or new compounds for MWSS–371 or CSSD–16. In the interim, this land will be made available for agricultural out-lease.

This is the only alternative that fully meets the Department's Purpose and Need. The alternative includes significant and unmitigated socioeconomic impacts because it requires the relocation of residents living in eleven homes on the land to be acquired.

The relocation of residents will be accomplished in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.). Compliance with this act will ensure displaced residents are relocated to a decent, safe, and sanitary home. All eligible displaced residents will be entitled to moving expenses. This program cannot substantially mitigate the loss of social ties, upheaval, and sense of loss that may be experienced by the individuals to be relocated. Therefore, while the economic effects of displacement will be reduced through compliance with the Uniform Relocation Assistance and Real Properties Act of 1970, the significant social impacts are considered unmitigable. No other significant impacts were identified for the Preferred Alternative.

The 1,069 Acre Alternative involved the acquisition and development of 1,069 acres of land to the south of MCAS Yuma. The land required for this alternative is encompassed entirely within the acquisition area identified above for the Preferred Alternative. This alternative would utilize the same CALA and ordnance storage magazines that are described for the Selected Alternative. However, the 1,069 Acre Alternative would not provide space for a new fire station or for the relocation of MWSS–371 and CSSD–16.

The BMGR Alternative would require the acquisition of 482 acres of land to the southeast of MCAS Yuma and the construction of a new CALA and associated structures at that location. Ordnance would be stored in new magazines constructed off-station at the BMGR in an approximately 4-square-mile (10-square- kilometer) area. Under this alternative, flat-tailed horned lizards would be significantly affected, and the transportation of ordnance between the BMGR and MCAS Yuma could result in adverse safety impacts to residents located along the route between the two facilities. Additionally, it would not provide space for a new fire station or for the relocation of MWSS–371 and CSSD–16, and it would increase staffing requirements at MCAS Yuma.

The No Action alternative requires no change in existing operations at MCAS Yuma. Ordnance storage would continue to require a waiver and the ESQD arc associated with the storage area would continue to extend off station. Ordnance truck trips would remain at current levels.

The environmentally preferred alternative is generally one that avoids or minimizes environmental impacts or results in a net beneficial environmental effect. In this case, the No Action Alternative is the environmentally preferred alternative because it would not require land acquisition and relocation of homeowners and would not have adverse physical impacts on the environment. The environmentally preferred alternative was not selected because it would not have fulfilled the primary and secondary objectives of the proposed action.

Environmental Impacts

There were no significant environmental impacts associated with the selected alternative. However, the Department of the Navy will initiate measures, described in the EIS, to mitigate impacts resulting from the action being taken. With the adoption of the measures identified in the EIS, the Department of the Navy has exercised all practicable means to avoid or minimize harm from the alternative selected.

Response to Comments

The Department of the Navy made the FEIS available to the public for a a 30-day review period. This review period was extended for an additional 30 days period. During the review period 19 comments were received: eight supporting the action and 11 opposed. The governmental bodies of Yuma City and Yuma County support the selected alternative. Opposition continues from the property owners and citrus and crop growers. No new substantive comments were received that were not previously addressed in the Draft and Final Environmental Impact Statements.

Conclusion

On behalf of the Department of the Navy, I have decided to implement the 1,641 Acre Alternative, as set out in the EIS, to improve ordnance storage at MCAS Yuma. In making this decision, I considered the following: existing assets and capabilities at MCAS Yuma; Marine Corps, Navy, DoD and allied operational and training requirements; ordnance handling and storage requirements; environmental impacts; socioeconomic impacts; costs associated with land acquisition and facility construction, the operation and maintenance of equipment and aircraft, and training of personnel; and comments received during the EIS process.

After carefully weighing all of these factors, I have determined that the Preferred Alternative, acquiring and developing 1,641 acres of agricultural and residential land to the south of MCAS Yuma, best meets the requirements.

Dated: February 1, 2000.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 00–3204 Filed 2–10–00; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 7, 2000.

Patrick Sherrill,

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

Office of Student Financial Assistance Programs

Type of Review: New.
Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.
Frequency: One time.
Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 263,000;
Burden Hours: 263,000
Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3179 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 7, 2000.

Patrick Sherrill,

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

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 2000–01 Teacher Follow-up Survey.

Frequency: Intended to be biennial; clearance is being sought for year 2000 only.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 8,300; Burden Hours: 4,616.

Abstract: This survey of 8,300 public and private elementary and secondary school teachers is the fourth in a series. It is a follow-up to the 1999–2000 Schools and Staffing Survey (SASS) and collects data on public school and private school teachers characteristics and attitudes, as well as the factors affecting their decisions to stay in, or leave, the teaching profession.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3180 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 7, 2000.

Patrick Sherrill,

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

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Beginning Postsecondary Students Longitudinal Study 1996–2001 (BPS: 1996/2001).

Frequency: On Occasion.

Affected Public: Businesses or other for-profit;Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 569.

Burden Hours: 224.

Abstract: The Beginning Postsecondary Student Longitudinal Study Second Follow-Up will continue the series of longitudinal data collection efforts started in 1996 with the National Postsecondary Student Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the work force, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional

Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy__Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3177 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 7, 2000.

Patrick Sherrill,

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

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Data Collection for the Program for International Student Assessment (PISA).

Frequency: Full-scale study.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 13,200; Burden Hours: 11,000.

Abstract: PISA will collect policy-oriented and internationally-comparable indicators of student achievement in reading, mathematics, and science at the ''end'' of secondary school on a timely and regular basis (every three years). For comparability with other education systems around the world, 15-year-old students will be assessed in the U.S. and comparisons of results will be made with approximately 30 countries.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3178 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

AGENCY: National Commission on Mathematics and Science Teaching for the 21st Century, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Mathematics and Science Teaching for the 21st Century (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend.

DATE AND TIME: Monday, March 6, 2000, from 3:30 p.m. to approximately 6:30 p.m. and Tuesday, March 7 from 8:30 a.m. to adjournment at approximately 4:30 p.m.

ADDRESSES: J.W. Marriott Hotel, Capitol Ballroom, 1331 Pennsylvania Avenue, NW, Washington, DC 20004, telephone: (202) 393–2000, toll-free (800) 228–9290, fax: (202) 626–6991.

FOR FURTHER INFORMATION CONTACT: Dr. Linda P. Rosen, Executive Director, The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202, telephone: (202) 260–8229, fax: (202) 260–7216.

SUPPLEMENTARY INFORMATION: The National Commission on Mathematics and Science Teaching for the 21st Century was established by the Secretary of Education and is governed by the provisions of the Federal Advisory Committee Act (FACA) (P.L. 92–463, as amended; 5 U.S.C.A. Appendix 2). The Commission was established to address the pressing need to significantly raise student achievement in mathematics and science by focusing on the quality of mathematics and science instruction in K–12 classrooms nationwide. The Commission will develop a set of recommendations with a corresponding, multifaceted action strategy to improve the quality of teaching in mathematics and science.

The meeting of the Commission is open to the public. On the afternoon of March 6th, the Commission will explore potential technology recommendations and review a draft of initial chapters of their report. Commission members will

work in breakout groups to discuss the draft and then convey their comments in a plenary session.

On March 7th, the meeting will explore potential recommendations for the recruitment, induction, and professional development of teachers of mathematics and science. The day will start with brief presentations on these three topics—recruitment, induction, and professional development. The rest of the morning will be spent in breakout groups. After lunch, the groups will report back to the entire Commission and discuss potential recommendations with commentary from several invited experts.

An agenda will be posted on the Internet at *http://www.ed.gov/americacounts/glenn/toc.html* on or before February 28, 2000.

On March 6 from 8:30 a.m. to approximately 2:30 p.m. Commission members are invited to attend a meeting organized by the Association for Computing Machinery (ACM) on how technology can significantly impact K–12 math and science teaching and learning. The ACM presentations and hands-on demonstrations are open to the public and will be held in the Capitol Ballroom of the J.W. Marriott.

Space for the meeting of the National Commission on Mathematics and Science Teaching for the 21st Century may be limited and you are encouraged to register if you plan to attend. You may register through the Internet at America__Counts@ed.gov or Jamila__Rattler@ed.gov. Please include your name, title, affiliation, complete address (including e-mail, if available), telephone and fax numbers. If you are unable to register through the Internet, you may fax your registration information to The National Commission on Mathematics and Science Teaching for the 21st Century at (202) 260–7216 or mail to The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202. The registration deadline is March 1, 2000. Any individual who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Jamila Rattler at (202) 260–8229 by no later than February 25, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records will be kept of all Commission proceedings, and will be available for public inspection at The National Commission on Mathematics and Science Teaching for the 21st Century, 400 Maryland Avenue, SW, Room 6W252 from the hours of 8:30 a.m. to 5:00 p.m. weekdays, except Federal holidays.

Dated: February 8, 2000.

Frank S. Holleman III,

Deputy Secretary.

[FR Doc. 00–3241 Filed 2–10–00; 8:45 am]

BILLING CODE 4000–04–M

DEPARTMENT OF ENERGY

DOE Implementation Plan for Recommendation 99–1 of the Defense Nuclear Facilities Safety Board, Safe Storage of Pits at Pantex

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 99–1, concerning the safe storage of pits at the Pantex plant, on August 27, 1999 (64 FR 46894). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 99–1 to the Defense Nuclear Facilities Safety Board after acceptance of the Recommendation by the Secretary. The Department's implementation plan was sent to the Safety Board on February 01, 2000, and is available for review in the Department of Energy Public Reading Rooms.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Issued in Washington, DC, on February 7, 2000.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board

The Secretary of Energy

February 1, 2000.

The Honorable John T. Conway
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

Dear Mr. Chairman: We are pleased to forward the Department of Energy implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board Recommendation 99–1, ''Safe Storage of Pits at Pantex.'' Defense Nuclear Facilities Safety Board Recommendation 99–1 is consistent with the Department's focus to develop and implement improved pit storage programs.

The primary objective of this implementation plan is to expeditiously repackage pits into containers that will provide long-term, safe storage. The activities delineated in the plan are aimed at achieving that goal and provide for the development and implementation of a pit container surveillance program so the Department can monitor the AL–R8 Sealed Insert to ensure its continued quality and reliability.

Mr. Dave Beck, Deputy Assistant Secretary for Military Application and Stockpile Operations, Defense Programs, is the responsible manager for this implementation plan. He can be contacted at 202–586–4879.

Yours sincerely,

Bill Richardson,

Enclosure.

[FR Doc. 00–3281 Filed 2–10–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Drinking Water State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Drinking Water State Revolving Fund Program; EPA ICR No. 1803.03; OMB No. 2040–0185; expiration date June 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1803.03. For technical questions about the ICR, contact Vinh Nguyen at

(202) 260–0715 or via email at nguyen.vinh@epa.gov. Additional information about the DWSRF program can be found at www.epa.gov/safewater/dwsrf.html.

SUPPLEMENTARY INFORMATION:

Title: Drinking Water State Revolving Fund Program; OMB No. 2040–0185; EPA ICR No. 1803.03; expiration date June 30, 2000. This is a request for an extension of a currently approved collection.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104–182) authorize the creation of Drinking Water State Revolving Fund (DWSRF) programs in each State and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of EPA to award capitalization grants to the States and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems (*i.e.,* local respondents).

The information collection activities will occur primarily at the program level through the Capitalization Grant Application and Agreement / State Intended Use Plan, Biennial Report, Annual Audit, and Assistance Application Review.

In order to receive a grant, the State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use funds in the program. The Capitalization Grant Agreement is the principal instrument by which the State commits to manage its revolving fund program in conformity with the requirements of the SDWA.

The State must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The Biennial Report indicates how the State has met its goals and objectives of the previous two fiscal years as stated in the grant agreement, and more specifically in the IUP. The report provides information on loan recipients, loan amounts, loan terms, project categories of eligible costs, and similar data on other forms of assistance.

A State must, at minimum, comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest, and EPA recommends, that a State conduct an annual independent audit of its DWSRF program (including set-asides), which contains an opinion on the financial statements of the DWSRF, a report on its internal controls, and a report on compliance with applicable laws and the SDWA.

Because States provide assistance to local applicants, States assist local applicants in preparing DWSRF loan applications and verify that proposed projects will comply with applicable federal and state requirements.

EPA will use the Capitalization Grant Application / Intended Use Plan, Biennial Report, and Annual Audit to help conduct its oversight responsibilities as mandated by the SDWA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 7, 1999 (64 FR 48615); 11 comments were received from two parties.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,703 hours per State response and 80 hours per local respondent response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments and local respondents.

Estimated Number of Respondents: 1,377.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 192,950 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1803.03 and OMB Control No. 2040–0185 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 2, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–3212 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6250–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 OR www.epa.gov/ocea/ofa.

Weekly Receipt of Environmental Impact Statements Filed January 31, 2000 Through February 04, 2000 Pursuant to 40 CFR 1506.9

EIS No. 000028, Draft EIS, BLM, NV, Marigold Mine Expansion Project, Implementation, COE Section 404 Permit, Special-Use-Permit, Humboldt County, NV, Due: April 10, 2000, Contact: Gerald Moritz (775) 623–1500.

EIS No. 000029, Final EIS, FHW, IN, IN–641 Terre Haute Bypass, Improve access between US 41 South to I–70 East of Terre Haute, Funding and COE Section 404 Permit, Vigo County, IN, Due: March 13, 2000, Contact: John R. Baxter (317) 226–7425.

EIS No. 000030, Final EIS, FHW, PA, Marshalls Creek Traffic Relief Study, Construction, Connector between PA–209, Business 209 and PA–402, COE Section 404 and NPDES Permits, Monroe County, PA, Due: March 13, 2000, Contact: David C. Lawton (717) 221–3461.

EIS No. 000031, Final EIS, FRC, MT, ID, Cabinet Gorge (No. 2058–014) and Noxon Rapids (No. 2075–014) Hydroelectric Project, Relicensing, MT and ID, Due: March 13, 2000, Contact: Bob Easton (202) 219–2782.

EIS No. 000032, Draft EIS, NPS, MT, Lake McDonald/Park Headquarters

Wastewater Treatment System Rehabilitation, Implementation, COE Section 404 Permit, Glacier National Park, A Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT, Due: March 31, 2000, Contact: Mary Riddle (406) 888–7898.

EIS No. 000033, Draft EIS, AFS, WA, Deadman Creek Ecosystem Management Projects, Implementation, Kettle Falls Ranger District, Colville National Forest, Ferry County, WA, Due: March 30, 2000, Contact: Wade Spang (509) 738–6111.

Dated: February 8, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–3198 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 24, 2000 Through January 28, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR datedApril 09, 1999 (63 FR 17856).

DRAFT EISs

ERP No. D–FHW–F40386–OH Rating EC2, Meigs-124–21.16 Transportation Corridor, Relocating existing OH–124 and US 33, MeigsCounty, OH.

Summary: EPA concerns will be adequately addressed if the project's forthcoming final EIS provides additional detail on the project's purpose and need statement and the conceptual wetlands compensation plan.

ERP No. D–FHW–F40387–OH Rating EC2, Lancaster Bypass (FAI-US 22/US 33–9.59/9.95) Construction, Funding, Greenfield, Hocking, Berne and Pleasant Townships, Fairfield County, OH.

Summary: EPA expressed environmental concerns due to potential noise impacts and wetlands compensation aspects. EPA requested noise mitigation actions and a wetland compensation plan.

ERP No. D–SFW–K64017–CA Rating EC2, Trinity River Mainstream Fishery Restoration, To Restore and Maintain the Natural Production of Anadromous Fish, Trinity and Humboldt Counties, CA.

Summary: While EPA supports the preferred alternative, EPA did express concern that additional mitigation measures are needed to ensure full protection of the environment, such as creation and restoration of cold water pool refugia and other cold water habitats.

ERP No. D–USN–C11017–NY Rating EC2, Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY.

Summary: EPA expressed environmental concerns due to potential issues related to air quality, ground water, and site contamination/remediation. EPA requested that these issues be clarified in the final EIS.

Dated: February 8, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–3199 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–6]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The PRB meeting will be held on Friday, March 3, 2000 from 8 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency Region 4,Regional Administrator's Conference Room, 61 Forsyth Street, Fourteenth Floor, Atlanta,Georgia 30303, telephone (404) 562–8357.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer,Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Review of GMP Priority Projects Identified by the States for FY 2000, Review of Federal Project Inventory—FY 2000 & FY 2001, and Discussion of Developing Support for the GMP.

The meeting is open to the public.

Dated: February 7, 2000.

Gloria D. Car,

Designated Federal Officer, Gulf of Mexico Program Office.

[FR Doc. 00–3211 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–4]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on February 28–29, 2000. On Monday, February 28, the meeting will begin at 9:00 a.m., and will recess at 4:30 p.m. On Tuesday, February 29, the meeting will reconvene at 8:45 a.m. and adjourn at approximately 1:00 p.m. All times noted are Eastern Time.

ADDRESSES: The meeting will be held at the Ronald Reagan Building, International Trade Center, Meridian D&E Rooms, 1300 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: Discussion on ORD's Particulate Matter $_{2.5}$ Research Program and BOSC Subcommittee Draft Reports on Particulate Matter, and discussion of the SAB and BOSC Subcommittee Review of ORD's Science to Achieve Results (STAR) Program. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue NW., Washington, DC 20460; or by

telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, S.W., Washington, DC 20460, (202) 564–6853.

Dated: February 7, 2000.

Peter W. Preuss,

Director, National Center for Environmental Research and Quality Assurance.

[FR Doc. 00–3209 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00530B; FRL–6489–7]

Pesticides; Clarification of Treated Articles Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of PR Notice 2000–1 clarifying the Agency's policy with respect to the applicability of the ''treated articles exemption'' in 40 CFR 152.25(a) to antimicrobial pesticides. The notice discusses EPA's past and present guidance on how treated articles and substances qualify for the exemption, as well as the distinction between public health and non-public health antimicrobial claims, by providing specific examples of claims and related terms which the Agency believes are or are not consistent with 40 CFR 152.25(a). This notice also explains the requirement that the pesticide in a treated article be ''registered for such use.''

FOR FURTHER INFORMATION CONTACT: Debbie Edwards, Senior Advisor, Antimicrobial Division, Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7891; fax: (703) 308–6467; e-mail: edwards.debbie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to manufacturers, distributors, and any other person selling or distributing pesticide treated articles and substances, and to manufacturers, distributors, and any other person selling or distributing pesticides used as preservatives to protect treated articles from microbial deterioration. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document, and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents, from the Internet EPA Home page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand.* You may request a faxed copy of the Pesticide Registration (PR) Notice 2000–1 titled ''Applicability of the Treated Articles Exemption to Antimicrobial Pesticides'' by using a faxphone to call (202) 401–0527 and selecting item 6110. You may also follow the automated menu.

II. Background

The ''treated articles exemption'' in 40 CFR 152.25(a) was promulgated in 1988. As provided by 40 CFR 152.25(a), in order to qualify for the ''treated articles exemption,'' (1) a product must be treated with a pesticide registered under FIFRA for incorporation into a specific treated article or substance, and (2) the claims allowed for such treatment must be limited to protection of the treated article only. If these two conditions are met, the product would qualify for the ''treated articles exemption'' and would be exempt from all FIFRA requirements. Since that time, enforcement actions have been taken by EPA where it deemed necessary. The products involved in these actions were dealt with so as to resolve individual issues arising in each matter. In recent years, however, a large variety of non-exempt antimicrobial treated products and substances with diverse claims have appeared in the marketplace. To address this case-by-case approach and to avoid marketplace confusion, the Agency decided to provide comprehensive guidance as set forth in a PR Notice to clarify EPA policy with respect to the applicability of the ''treated articles exemption'' and to provide examples of acceptable and unacceptable claims for use on labels and advertisements which the Agency believes are consistent with 40 CFR 152.25(a).

In the **Federal Register** of April 17, 1998 (63 FR 19256) (FRL–5780–7), EPA published a notice of availability of a draft PR Notice soliciting comments on proposed guidance clarifying the criteria considered by EPA for determining whether antimicrobial pesticides are eligible for the ''treated articles exemption,'' as well as to make it clear that the Agency continues to consider any public health claim as not being consistent with the provisions of 40 CFR 152.25(a). Comments were to be received by May 18, 1998. In the **Federal Register** of May 18, 1998 (63 FR 27280) (FRL–00530A), EPA extended the comment period until June 30, 1998. In response, the Agency received 107 comments to the draft PR Notice from a wide spectrum of the antimicrobial community. This **Federal Register** notice announces the availability of PR Notice 2000–1 titled ''Applicability of the Treated Articles Exemption to Antimicrobial Pesticides.''

III. Comments to the Draft Notice

In developing PR Notice 2000–1, the Agency evaluated 107 comments received in response to the April 17, 1998 draft notice. At the same time, treated article issues were discussed in two antimicrobial workshops and in numerous meetings with individuals and representatives of the antimicrobial pesticide community. Among the principal concerns raised during these dialogs were the Agency's position regarding aesthetic claims and the 60–day time frame for compliance with any new elements of the final notice. In evaluating these concerns, EPA has come to the conclusion that properly worded aesthetic claims continue to fall within the scope of the ''treated articles exemption'' because mitigation of non-public health related organisms which are responsible for mildew and odors can contribute to the protection of the appearance and maintenance of the intended shelf life of the treated article or substance. EPA has also been made aware of the complexities associated with the manufacture and distribution of treated paint and textile products and believes that February 11, 2001, would be an appropriate time frame for implementing any new elements of the final notice.

Other concerns were raised about the Agency's position regarding the use of terms such as ''antibacterial,''

''germicidal,'' ''antimicrobial,'' and ''mildew-resistant'' and the need for certain types of qualifying and prominent language displayed in association with these terms. EPA continues to believe that the terms ''antibacterial,'' ''germicidal'' and similar language imply a public health benefit regardless of the context in which they are used on the labeling and are thus, inappropriate for products intended merely for the non-public health protection of treated articles and substances. On the other hand, the Agency believes that while terms such as ''antimicrobial'' and ''mildew-resistant'' have the same potential for misinterpretation, if such terms are properly qualified and are not prominently displayed on the labeling, these terms would be acceptable for articles and substances claiming the exemption.

Throughout its deliberations, EPA has strived to develop clear guidance, consistent with past and present Agency practice, to create a ''level playing field'' for all affected entities. Furthermore, EPA believes that the provisions of PR Notice 2000–1 will have a minimum impact on small business entities, and the Agency is committed to continue to work closely with the antimicrobial community and other affected parties in cases where compliance with the requirements of this notice might present difficulties which are presently unknown.

IV. Contents of PR Notice 2000–1

PR Notice 2000–1 clarifies the conditions under which the ''treated articles exemption'' will apply and provides examples of acceptable and unacceptable claims for use on labels and advertisements which the Agency believes are consistent with 40 CFR 152.25(a). PR Notice 2000–1 also discusses the requirement that the pesticide in a treated article be ''registered for such use.''

V. Effective Date and Procedures

In order to remain in compliance with FIFRA and avoid regulatory or enforcement consequences as described, it is the Agency's position that producers, distributors, and any other person selling or distributing pesticide treated articles and substances not in compliance with the Agency's interpretation of 40 CFR 152.25(a), as clarified by this notice, need to bring their products, labeling and packaging, any collateral literature, advertisements or statements made or distributed in association with the marketing of the treated article or substance into full compliance with the regulation as clarified by this notice as soon as possible.

Because some of the elements of this interpretation may not have been well understood by the regulated community, the Agency expects that some companies may need up to a year in order to comply with those elements that have been clarified by this notice. Therefore, for the present, the Agency is following the approach set forth in the April 17, 1998 **Federal Register**. Although non-public health claims for microbial odor control and mold and mildew claims associated with deterioration, discoloration, and staining were not specifically mentioned in the April 17, 1998 **Federal Register**, such claims are also consistent with the enforcement approach set forth in that notice, as well as with this guidance, provided that they are properly, and very clearly, qualified as to their non-public health use. The Agency will begin to rely on the guidance provided in this notice on February 11, 2001. Products in commerce after that date would risk being considered out of compliance with 40 CFR 152.25(a). The Agency also wants to make it clear that inclusion of this date does not authorize marketing of treated articles which do not comply with EPA's interpretation of the ''treated articles exemption'' in 40 CFR 152.25(a). The Agency has consistently interpreted and applied this rule to prohibit implied or explicit public health claims for unregistered products and continues to regard any public health claims as not being consistent with the provisions of 40 CFR 152.25(a).

List of Subjects

Environmental protection.

Dated: February 4, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

[FR Doc. 00–3219 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–915; FRL–6487–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–915, must be received on or before March 13, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–915 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5417; e-mail address: perreault.peg@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–915. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–915 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–915. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BAYER Corporation

PP 8F4940

EPA has received a pesticide petition (PP 8F4940) from BAYER Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of imidacloprid in or on the raw agricultural commodities (RAC): citrus fruit, citrus pulp, dried and the leafy petiole subgroup (4-B) at 0.7, 5.0, and 6.0 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in

section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the imidacloprid residue in plants is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method*. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GC/MS) selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromotography using ultra-violet detection (HPLC-UV) which has been validated by EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues*—i. *Citrus*. Forty-three residue crop field trials (23 foliar applications and 20 soil applications) were conducted to evaluate the quantity of imidacloprid expected in citrus from Admire 2, Flowable and Provado 1.6 applications. These trials were conducted in EPA Regions III, VI, and X. Imidacloprid residues in citrus whole fruit (oranges, grapefruit, and lemons) were quantitated by GC using a MS detector. The limit of quantitation (LOQ) was 0.05 ppm. The highest average field trial (HAFT) was 0.61 ppm in oranges. A processing study at 5 times the maximum recommended label use rate was conducted to evaluate the quantity of imidacloprid and metabolite residue in orange processed commodities following treatment of orange trees with Admire 2F. Harvested whole oranges were processed into dried pulp, oil, molasses, and juice using procedures which simulated commercial orange processing practices. Imidacloprid and metabolite residues in orange whole fruit and orange processed commodities were quantitated by GC using a MS detector. Total residue of imidacloprid and metabolites in orange whole fruit was 0.19 ppm. EPA's Table 1 - RAC and processed commodities and feedstuffs derived from crops lists dried pulp, oil, and juice as processed commodities. The processing study showed a total residue for imidacloprid and metabolites of 1.42 ppm (7.5x concentration) in dried pulp and no concentration of total residue of imidacloprid and metabolites in both orange juice and oil (0.05 ppm).

ii. *Leaf petioles subgroup vegetables*. Twelve residue crop field trials on celery were conducted to evaluate the quantity of imidacloprid expected in members of the leaf petiole vegetable subgroup from Admire 2 Flowable applications. These trials, which compared plant drench, soil sidedress and in-furrow at transplant applications, were conducted in EPA Regions III, V, VI, X, and XI. Imidacloprid residues in untrimmed celery stalks were quantitated by using a GC/MC. The LOQ was 0.05 ppm. Total residue values ranged from 0.13 to 5.62 ppm.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} values for imidacloprid technical ranged from 424 - 475 milligrams/kilograms/body weight (mg/kg/bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was 69 mg/m^3 air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity*. A 2-generation rat reproduction study gave a no-observed adverse effect level (NOAEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity*. Ninety-day feeding studies were conducted in rats and dogs. The NOAELs for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies, respectively.

5. *Chronic toxicity*. A 2-year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOAEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased bwt gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOAEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and had a NOAEL of 1,000 ppm (208 mg/kg/day). Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The RfD based on the 2–year rat feeding/carcinogenic study with a NOAEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt.

6. *Animal metabolism*. The metabolism of imidacloprid in rats was reported in seven studies. Data in these studies show that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70-80% of the dose) and fecal (17-25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6-chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water from the parent compound.

7. *Metabolite toxicology*. Several metabolites of imidacloprid have been investigated for acute toxicity and genotoxicity. No evidence for genotoxicity was found, and acute toxicity values for all metabolites studied ranged from slightly more toxic to significantly less toxic than parent imidacloprid.

8. *Endocrine disruption*. The toxicology data base for imidacloprid is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For purposes of assessing the potential acute and chronic dietary exposure, Bayer has estimated exposure based on the theoretical maximum residue contribution (TMRC). The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data. The consumption data, based on the NFCS 1989-92 data base, estimates the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups.

a. *Acute*. For acute dietary exposure the model calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOAEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. EPA has determined that a NOAEL of 24 mg/kg/day from a developmental toxicity study in rabbits should be used to assess acute toxicity.

The MOE for imidacloprid derived from previously established tolerances, pending tolerances, plus the proposed use on citrus and the leaf petiole subgroup would be 366 for the U.S. population (48 contiguous States), 323 for non-nursing infants, 101 for children (ages 1–6 years), 420 for children (ages 7–12 years), 622 for males 13+ years, and 554 for females 13+ years at the 99.9 percentile. These MOEs do not exceed EPA's level of concern for acute dietary exposure.

b. *Chronic*. For purposes of assessing the potential chronic dietary exposure, the model uses the RfD which EPA has determined to be 0.057 mg/kg/day. This is based on the 2–year rat feeding/carcinogenic study with a NOAEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor. In conducting this exposure assessment, very conservative assumptions (100% of all commodities contain imidacloprid residues and those residues are at the level of the tolerance) result in a large overestimate of human exposure.

Using these conservative assumptions, the TMRC for imidacloprid derived from previously established tolerances, pending tolerances, plus the proposed use on citrus and leaf petiole subgroup would be 0.008149 mg/kg bwt/day (14.3% of the RfD) for the U.S. population (48 contiguous States) and 0.018367 mg/kg bwt/day (32.2% of the RfD) for the most highly exposed population subgroup, children (1–6 years old). Therefore, chronic dietary exposure from the existing and proposed uses will not exceed the RfD for any subpopulation, including infants and children.

ii. *Drinking water*. EPA has determined that imidacloprid is persistent and could potentially leach into groundwater. However, there is no established maximum contamination level (MCL) or health advisory levels established for imidacloprid in drinking water. EPA's ''Pesticides in Groundwater Database'' has no entry for imidacloprid. In addition, Bayer is not aware of imidacloprid being detected in any ponds, lakes, streams, etc. from its use in the United States. Groundwater monitoring studies conducted in California, Michigan, and Long Island over the past 2 years have found maximum concentrations to be only 0.0001, 0.0002, and 0.0019 milligrams/liter (mg/L), respectively. Therefore, contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

2. *Non-dietary exposure*—i. *Residential turf*. Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 - 41,546 for 10–year old children and 6,859 - 45,249 for 5–year old children were estimated by comparing dermal exposure doses to the imidacloprid NOAEL of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year old children ranged from 5.6 - 38.2 g/cm^2 and for 5–year old children from 5.1 - 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide*. Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch (OREB) and Bayer. Data indicate that the MOS for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0 x 107 and 2.4 x 108, respectively; exposure can thus be considered negligible.

iii. *Tobacco smoke*. Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study, only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment*. Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

No other chemicals having the same mechanism of toxicity are currently registered, therefore, there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described under aggregate exposure and based on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 14.3% of the RfD for the U.S. population from food, water, and non-occupational sources. EPA generally has no concern for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In addition, the MOEs for all population groups does not exceed EPA's level of concern for acute dietary exposure. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the

developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal effects and the completeness of the toxicity data base. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to prenatal and postnatal effects is complete. Further for imidacloprid, the NOAEL of 5.7 mg/kg/bwt from the 2–year old rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOAELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, it is surmised that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above under aggregate exposure, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of imidacloprid ranges from 9.3% for nursing infants up to 32.2% for children (1–6 years old). EPA generally has no concern for exposure below 100% of the RfD. In addition, the MOEs for all infant and children population groups do not exceed EPA's level of concern for acute dietary exposure. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of imidacloprid, including all anticipated dietary exposure and all other non-occupational exposures

F. International Tolerances

No CODEX maximum residue levels have been established for residues of Imidacloprid on any crops at this time.

[FR Doc. 00–3220 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6535–1]

Notice of Availability: Announcing the availability of a new draft guidance document entitled Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is providing notice that the following draft guidance document Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft) is available and an 180-day public review period of the document will begin today.

This document contains the Office of Solid Waste's recommended approach for conducting site-specific ecological risk assessments on hazardous waste combustors regulated under the RCRA program. The document includes specific parameters, pathways and algorithms to evaluate both direct and indirect risks to ecological receptors. The goal of this guidance document is to develop a consistent and credible methodology for conducting ecological risk assessments at hazardous waste combustion facilities. The results of the risk assessments will give an understanding of the potential ecological risks associated with emissions from those facilities.

On October 30, 1998, EPA announced in the **Federal Register** (FR Doc. 98–29157) the availability of this documents' companion document, Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft—EPA530–D–98–001A, B & C). OSW recommends that RCRA permitting authorities consider these documents together when conducting risk assessments on hazardous waste combustor emissions. The results of these risk assessments can provide a basis for risk management decisions in the permitting of hazardous waste combustors and help to ensure that the operation of hazardous waste combustion facilities will be protective of human health and the environment.

This document has undergone extensive internal Agency review. It is Agency policy that documents such as this be subject to peer review as well. EPA expects to have the document reviewed by a group of independent scientists in the future. Information regarding the peer review process will be published in a **Federal Register** notice closer to the date of the review.

All public comments should be received by August 9, 2000, to be considered by the Agency. The public comments will be for the Agency's evaluation only and are not intended to be part of the peer review process. To ensure an efficient public comment review and resolution process, EPA recommends that the comments be supplied in the following format. All comments should be individually identified and a proposed resolution (or action) be recommended. In addition, any supporting information or reference materials which corroborate the comment and or proposed resolution should be furnished as well. All information supplied should be in English or accompanied by an English translation. All comments received from both the public and the peer review will be considered during finalization of this guidance document.

DATES: Public comments on the document Screening Level Ecological Risk Assessment Protocol for Hazardous Waste Combustion Facilities should be received by the docket no later than August 9, 2000.

FOR FURTHER INFORMATION CONTACT: For further information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific questions on implementation of the methods described in this document, please contact your RCRA regulatory authority; for other questions contact Karen Pollard, Office of Solid Waste, 5307W U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; phone: (703) 308–3948; e-mail: Pollard.Karen@EPA mail.EPA.gov.

ADDRESSES: Commenters must send the original and two copies of their comments referencing docket number F–1999–SLRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, DC 20460. Comments submitted electronically should be identified by the docket number F–1999–SLRA–FFFFF and submitted to: *RCRA–docket@epamail.epa.gov.* EPA's Office of Solid Waste (OSW) also accepts data on disks in Wordperfect 6.1 file format. EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII

(TEXT) format (with no special characters or any form of encryption) or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street S.W., Washington, DC 20460.

Public comment and supporting materials will be made available for viewing from 9 a.m. to 4 p.m., Monday through Friday (except Federal holidays) in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and notice are available electronically. See the ''Supplementary Information'' section for information on accessing it.

SUPPLEMENTARY INFORMATION: For paper or CD–ROM copies of the guidance document, please contact the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, DC 20460, (703) 603–9230. The document is a three volume set, with document numbers of: EPA530–D–99–001A: Methodologies; EPA530–D–99–001B: Appendices A & B; and EPA530–D–99–001C: Appendices C–H. CD–ROM copies of this document may also be obtained from the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. The document is also available in electronic format on the world wide web at:*http://www.epa.gov/epaoswer/hazwaste/combust/riskhtm.*

Dated: January 19, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–3217 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6534–6]

Proposed CERCLA Administrative Cost Recovery Settlement; Surrette America Battery Removal Site, Northfield, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: In accordance with 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Surrette America Battery Removal Site, Northfield, New Hampshire with the following settling parties: Clark H. Neill, Surrette Storage Battery Co., Inc., and C&J Neill, Inc. The settlement requires the settling parties to pay $10,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the United States Environmental Protection Agency will receive written comments relating to the settlement. The United States Environmental Protection Agency will receive written comments relating to the settlement. The United States Environmental Protection Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States Environmental Protection Agency's response to any comments received will be available for public inspection at Hall's Memorial Library, 18 Park Street, Northfield, New Hampshire, and United States Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114.

DATES: Comments must be submitted on or before March 13, 2000.

ADDRESSES: The proposed settlement is available for public inspection at United States Environmental Protection Agency, EPA-New England, One Congress, Suite 1100, Boston, MA 02114. A copy of the proposed settlement may be obtained from Barbara O'Toole, Responsible Party Coordinator, United States EPA, Region 1, One Congress Street, Suite 1100 (HBS), Boston, MA 02114, (617) 918–1408. Comments should reference the Surrette America Battery Removal Site, Northfield, New Hampshire and EPA Docket No. CERCLA 1–99–0045 and should be addressed to Barbara O'Toole, Responsible Party Coordinator, United States EPA, EPA-New England, One Congress Street, Suite 1100 (HBS), Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Barbara O'Toole, Responsible Party Coordinator, United States EPA, Region 1, One Congress Street, Suite 1100 (HBS), Boston, MA 02114, (617) 918–1408.

Dated: January 27, 2000.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 00–3210 Filed 2–10–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from a severe winter storm beginning on January 22, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert

T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) including direct Federal assistance under Public Assistance, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, including direct Federal assistance, or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Theodore A. Monette, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Debris removal (Category A) and emergency protective measures, (Category B), including direct Federal assistance, for the counties of Banks, Barrow, Bartow, Chattooga, Cherokee, Cobb, Dawson, DeKalb, Elbert, Fannin, Forsyth, Franklin, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Hart, Lumpkin, Newton, Oconee, Paulding, Pickens, Rabun, Stephens, Union, Walker, White, and Wilkes.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–3227 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 1, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3228 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 28, 2000:

Butts, Clarke, Haralson, Henry, Jackson, Jasper, Lamar, Pike, Spalding, Taliaferro, and Upson counties for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F), under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3229 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1312–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1312–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 31, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from a severe winter storm beginning on January 24, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster

declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos N. Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Debris removal (Category A) and emergency protective measures (Category B) for the counties of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Nash, Northampton, Orange, Person, Randolph, Richmond, Rockingham, Scotland, Stanly, Union, Vance, Wake, and Warren.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–3230 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1312–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1312–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 2, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina is hereby amended to close the incident period and to include Utilities, Category F, under Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 31, 2000:

Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Nash, Northampton, Orange, Person, Randolph, Richmond, Rockingham, Scotland, Stanly, Union, Vance, Wake, and Warren Counties for Utilities, Category F, under Public Assistance (already designated for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance.

The incident period for this disaster is closed effective February 1, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3231 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–1313-DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 31, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from a severe winter storm beginning on January 22, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James L. Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to

have been affected adversely by this declared major disaster:

Debris removal (Category A) and emergency protective measures, (Category B) for the counties of Abbeville, Berkley, Calhoun, Charleston, Collenton, Cherokee, Chester, Chesterfield, Darlington, Dillon, Edgefield, Fairfield, Florence, Greenwood, Kershaw, Lancaster, Laurens, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Spartanburg, Sumter, Union, and York.

All counties within the State of South Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–3232 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–1313–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 1, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3233 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina, (FEMA–1313–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Carolina is hereby amended to include Utilities, Category F, under Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 31, 2000:

Aiken, Allendale, Bamberg, Barnwell, Clarendon, Dorchester, Georgetown, Lee, Lexington, McCormick, and Williamsburg Counties for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

Abbeville, Berkley, Calhoun, Charleston, Collenton, Cherokee, Chester, Chesterfield, Darlington, Dillon, Edgefield, Fairfield, Florence, Greenwood, Kershaw, Lancaster, Laurens, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Spartanburg, Sumter, Union, and York Counties for utilities (Category F) under Public Assistance (already designated for debris removal) (Category A) and emergency protective measures (Category B) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–3234 Filed 2–10–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks 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 offices 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 February 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. John Randall (Randy) Winegard, Burlington, Iowa; Larry Henson, Davenport, Iowa; James Woods, Davenport, Iowa; Gregory Jay Shottenkirk and Toni Marie Shottenkirk, Fort Madison, Iowa; Shottenkirk Partnership L.P.; Lee Capital Corporation, Fort Madison, Iowa; Lynn Crabtree, Fort Madison, Iowa; Charlotte Foster, Davenport, Iowa; Foster Family Partnership, Davenport, Iowa; Robert Charles Fick, Eldridge, Iowa; Ronald Lee Burmeister, Eldridge, Iowa; Winegard Realty Company, Burlington, Iowa; Rob Rick Inc., Davenport, Iowa; and Brian Tugana, Clinton, Iowa; to acquire additional voting shares of River Valley Bancorp, Inc., Eldridge, Iowa, and thereby indirectly acquire additional voting shares of Valley State Bank, Eldridge, Iowa.

Board of Governors of the Federal Reserve System, February 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3273 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Kane.Commerce Co., Davenport, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank of Plymouth, Plymouth, Illinois.

Board of Governors of the Federal Reserve System, February 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3160 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Deutsche Bank Aktiengesellschaft, Frankfurt, Germany; through its wholly owned subsidiary, DB Investments (AXM) Limited, London, United Kingdom, to retain 9 percent of the shares of TP Group LDC, Grand Cayman, Cayman Islands, and through its majority owned subsidiary, Tradepoint Financial Networks, PLC London, United Kingdom, engage in operating a securities exchange, *see J.P. Morgan & Co. Incorporated,* 86 Fed. Res. Bull. 61, (2000).

Board of Governors of the Federal Reserve System, February 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3159 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, February 16, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–3366 Filed 2–9–00; 1:15 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 992 3228]

DBC Financial, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATE: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michelle Chua, FTC/S–4429, 600

Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3248.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 4, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from DBC Financial, Inc. (''DBC Financial''). The agreement would settle a complaint by the Federal Trade Commission that DBC Financial engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made by DBC Financial in its advertising of the Delaware Bank Card, an automated teller machine (''ATM'') bank card that offers direct deposit services with an affiliated bank. The administrative complaint alleges that DBC Financial violated the FTC Act by falsely representing: (1) that use of the Delaware Bank Card requires no upfront fees, when, in fact, use of the card requires an account setup fee of $19.95, as well as a monthly service fee of $9.95; (2) that the Delaware Bank Card is affiliated with the United States government agency, institution, or program, when in fact it is not; and (3) that use of the Delaware Bank Card automatically provides free overdraft protection services of up to $1,000 a year, when in fact the card charges an overdraft protection fee of $19.95 for every month in which the consumer's account is overdrawn by up to $80.00.

To remedy the violations charged and to prevent respondent from engaging in similar acts and practices in the future, the proposed order contains injunctive provisions and a consumer redress program. Part I of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from making any misrepresentation or material omission concerning the costs, benefits, or conditions of the Bank Card or Bank Card-related service or product, including the following: (1) that use of the Bank Card requires no up-front fees, if in fact DBC Financial is charging an Account Set-up fee or any other initial fee; and (2) that use of the Bank Card provides free of charge any overdraft protection services, if in fact DBC Financial is charging an overdraft protection fee.

Part II of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from misrepresenting that DBC Financial or any of its Bank Card or Bank Card-related service or products are affiliated in any way with any United States governmental agency, institution, or program.

Part III of the order requires respondent to clearly and conspicuously disclose, in connection with any representation about the availability of electronic transfer of funds from any government entity, the following: ''NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program.'' This disclosure is not required, however, to the extent that respondent is promoting a U.S. Treasury-designated ETA on behalf of a financial institution that is participating in the government ETA program.

Part IV of the order requires respondent to pay $250,000.00 for the redress program and administrative costs. The redress program applies to certain consumers who, as of August 31, 1999, had an active Delaware Bank Card account and who were charged an account set-up fee. In addition, Part V of the order requires respondent to waive the account set-up fee of $19.95 for all Delaware Bank Card accounts opened between August 31, 1999 and January 31, 2000.

The proposed order also contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–3236 Filed 2–10–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00042]

Extramural Injury Research Grants for the Prevention of Intimate Partner Violence and Sexual Violence; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Prevention and Control Research Grants (RO1s) for fiscal year (FY) 2000.

This announcement is related to the Healthy People 2000 Priority areas of Violent and Abusive Behavior.

The purposes of this program are to:

1. Promote research to identify and understand the developmental pathways of victimization and perpetration of intimate partner violence and sexual violence.

2. Encourage developmental research that leads to science-based indicators for culturally appropriate intervention and prevention strategies to prevent and control the extent of injuries that result from intimate partner violence and sexual violence.

3. Expand risk-factor and protective-factor research related to the perpetration and victimization of intimate partner violence and sexual violence.

4. Build the scientific base for the prevention of injuries, disabilities, and deaths due to violence.

5. Encourage professionals from a wide spectrum of disciplines such as public health, health care, medicine, criminal justice, and behavioral and social sciences, to work together and undertake research to prevent and control injuries that result from violence.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1.2 million is expected to be available in FY 2000 for injury research grants to fund approximately 4 awards. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, ''Programmatic Interests.'' It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a 3-year project period. The maximum funding level will not exceed $300,000 (including both direct and indirect costs) per year or $900,000 for the 3-year project period. Applications that exceed the funding cap of $300,000 per year will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one-day meeting should be included in the applicant's proposed budget), the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

CDC is soliciting studies that identify the factors which moderate and mediate the association between exposure to violence and/or violence-related behaviors, (*e.g.*, rape, sexual violence, and intimate partner violence, other interpersonal violence, bullying, child abuse and neglect, child sexual abuse) and witnessing violence (*e.g.*, intimate partner violence, sexual violence, other interpersonal violence, and suicidal behavior), and violent outcomes (*i.e.*, subsequent victimization and/or perpetration of intimate partner violence and sexual violence).

Moderating factors include the individual, social, cultural and environmental factors which influence the likelihood that exposure to violence will lead to future violent outcomes. Mediating factors include the proximal consequences of exposure (*e.g.*, hopelessness, learned response to violence, alcohol and drug use, weapon carrying) that result in increased risk of violent outcomes. The context in which violence occurs and potential culturally relevant intervention and prevention strategies relative to moderating and mediating factors should be integral foci of the study.

1. Injury prevention research addressing moderating factors

a. Conduct research to understand how individual, social, cultural and environmental factors which influence the likelihood that exposure to violence will lead to the perpetration and victimization of violence against women, and sexual violence.

b. Conduct research designed to improve understanding of the nature of moderating factors among under served and potentially high-risk populations (*e.g.*, ethnic populations, persons with disabilities, gay, lesbian, trans gender and bisexual populations, or immigrant and refugee populations).

2. Injury prevention research addressing mediating factors

a. Conduct research that further illuminates understanding of the contribution of potential risk factors for violence such as impulsivity, hopelessness, weapon carrying, alcohol/drug use, and other risk taking behavior.

b. Conduct research to elucidate protective factors for intimate partner violence and sexual violence.

c. Conduct research to provide scientific evidence for potentially effective and culturally appropriate intervention or prevention strategies for intimate partner violence and sexual violence.

Funding Preferences

Studies which focus on under served population(s) including ethnic populations, persons with disabilities, gay, lesbian, trans gender and bisexual populations, or immigrant and refugee populations will be given priority. These populations are considered under served because substantial research has not been devoted to determining risk and protective factors or mediating or moderating influences which may affect intimate partner violence or sexual violence in these groups.

D. Program Requirements

The following are applicant requirements:

1. A principal investigator, who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research pertaining to violence in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Addendum 2,(6.a–c).

5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, ''Programmatic Interests.''

E. Application Content

Applications should follow the PHS–398 (Rev. 4/98) application and Errata sheet, and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2000'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant. Awards will be made for a project period of up to 3-years.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within 3–5 years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Pre-Application Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter of intent must be submitted on or before March 13, 2000, to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. The letter should identify the announcement number, name the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Submit the original and five copies of PHS 398 (OMB Number 0925–0001 and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before April 12, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Applications shall be considered as meeting the deadline if they are received at the above address on or before the deadline date; or sent on or before the deadline date, and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

Late Applications

Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the heading Program Requirements (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the proposal.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be determined by the Director of the National Center for Injury Prevention and Control (NCIPC) based on priority scores assigned to applications by the primary review committee, recommendations by the secondary review committee, consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All proposals will be reviewed for scientific merit by a committee of no less than three reviewers with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the proposal. Factors to be considered will include:

a. Significance. Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator. Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting violence-related research?

e. Environment. Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues: What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with

mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? (Not scored)

g. Study Samples: Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination: What plans have been articulated for disseminating findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Work Group (SPRWG) from the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal ex officio members will be invited to attend the secondary review, will receive modified briefing books, (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal ex officio members will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRWG members will vote on funding recommendations and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The Secondary Review Committee has the latitude to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The match between the application and the solicitation's programmatic interests and funding preferences, *i.e.,* for applications with relatively similar priority scores, preference will be given to those applications that focus on under served population(s).

c. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

d. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2000'' and the Institute of Medicine report, ''Reducing the Burden of Injury''.

e. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2000, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of

1. Progress report annually,

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words) summary highlighting the findings and their implications for research and policy. CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application package.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Carrie Clark, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement #00042, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone (770) 488–2719, Internet address: zri4@cdc.gov.

For program technical assistance, contact: Ted Jones, Program Manager, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–

3724, Telephone (770) 488–4824, Internet address: tmj1@cdc.gov.

Dated: February 7, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3184 Filed 2–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., February 28, 2000. 8:30 a.m.–12 p.m., February 29, 2000.

Place: Wyndham Atlanta Hotel, 160 Spring Street, Atlanta, Georgia 30303, telephone 404/688–8600.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 90 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Childhood Lead Poisoning Prevention activities update, Medicaid issues, Screening and Case Management Working Group updates, and updates on Medical and Environmental Management issues. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Becky Wright, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE, M/S E–25, Atlanta, Georgia 30333, telephone 404/639–1789, fax 404/639–2570.

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 ToxicSubstances and Disease Registry.

Dated: February 7, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–3333 Filed 2–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation.

ACTION: Notice of meeting.

DATES: Thursday, February 24, 2000 from 9:00 a.m. to 2:00 p.m.

Place: The meeting will be held in the Loews New York Hotel, 569 Lexington Avenue at East 51st Street, New York, New York 10022. Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

FOR FURTHER INFORMATION CONTACT: Jane L. Browning, Executive Director, President's Committee on Mental Retardation, Room 701 Aerospace Building, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 619–0634.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Dated: February 7, 2000.

Jane L. Browning,

Executive Director, PCMR.

[FR Doc. 00–3245 Filed 2–10–00; 8:45 am]

BILLING CODE 4104–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0352]

Status of Useful Written Prescription Drug Information for Patients; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the findings of the interim study of the status of useful written prescription drug information for patients consistent with the criteria specified in the ''Action Plan for the Provision of Useful Prescription Medicine Information'' (Action Plan). The purpose of this meeting is to present the study methodology and results and seek feedback prior to developing assessment of the year 2000 goals. The meeting will begin with presentations about the report and findings, followed by small group discussions and feedback. FDA encourages interested individuals to attend this meeting or submit comments.

DATES: The public meeting will be held on Tuesday, February 29, 2000, from 1 p.m. to 5:30 p.m. and Wednesday, March 1, 2000, from 8:30 a.m. to 3 p.m. The deadline for registration is February 18, 2000. Early registration is recommended, as space is limited. Registration and dissemination of materials will begin at 11 a.m. on February 29, 2000. Written comments will be accepted until April 28, 2000.

ADDRESSES: The public meeting will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville MD 20852. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the study report as well as registration information can be obtained at http://

www.fda.gov/cder/calendar/meeting/rx2000. A transcript and summary of the meeting may be seen at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Marcia L. Trenter, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301–827–1674, or e-mail: trenterm@cder.fda.gov).

SUPPLEMENTARY INFORMATION: Inadequate access to useful patient information is a major cause of inappropriate use of prescription medicines, leading to serious personal injury and costs to the health care system. While the rate of distribution of written prescription drug information materials has increased somewhat over the past 15 years, the quality of such material has been quite variable.

In the **Federal Register** of August 24, 1995 (60 FR 44182), FDA published a proposed rule that aimed to increase the quality and quantity of written information about prescription medicines given to patients. In the proposed rule, entitled ''Prescription Drug Product Labeling; Medication Guide Requirements,'' FDA encouraged the private sector to develop and distribute patient-oriented written information leaflets for all prescription drugs, and set targets for the distribution of these leaflets. In addition to setting target distribution goals by specific dates, the proposed rule set criteria by which written information would be judged to determine whether it was ''useful'' and should therefore count toward accomplishment of the target goals.

In August 1996, the U.S. Congress passed Public Law 104–180 mandating that the private sector be given the opportunity to meet distribution and quality goals for written patient prescription medicine information. It also directed that the Secretary of Health and Human Services (the Secretary) facilitate the development of a long-range comprehensive action plan to meet these goals through private-sector efforts.

The Secretary asked the Keystone Center to convene a Steering Committee to collaboratively develop this action plan. The Action Plan accepted by the Secretary in January 1997 reiterated the target goals specified in the Federal legislation. These goals were that by the year 2000 useful written information would be distributed to 75 percent of individuals receiving new prescriptions for medicines, and by the year 2006 to 95 percent of such individuals. The Action Plan generally endorsed the conceptual criteria specified in Public Law 104–180 for defining the usefulness of medication information. Specifically, it stated that such materials should be: (1) Scientifically accurate; (2) unbiased in content and tone; (3) sufficiently specific and comprehensive; (3) presented in an understandable and legible format that is readily comprehensible to consumers; (4) timely and up to date; and (5) useful, that is, enables the consumer to use the medicine properly and appropriately, receive the maximum benefit, and avoid harm. The Action Plan, including descriptions of the criteria, is available on the Internet at http://www.nyam.org/library/keystone.

Consistent with Public Law 104–180, the Action Plan called for the development of a mechanism to periodically assess the quality of written prescription information for patients. To test a methodology for collecting patient information materials and assessing their usefulness, FDA developed a contract with the National Association of Boards of Pharmacy. The contract called for the selection of several State Boards of Pharmacy who would arrange for collecting, from a sample of State pharmacies, medication information materials given with new prescriptions for three commonly prescribed prescription drugs. The contract also called for the development of evaluation materials to assess the usefulness of the information through application of the Action Plan criteria. The medication information materials were collected in 1999, and the final report from the evaluation was completed in December 1999. The report is available on the Internet at http://www.fda.gov/cder/calendar/meeting/rx2000.

FDA is seeking comments on several issues:

- What should be the minimum standard or threshold that must be met for written information to be considered useful?
- Should certain criteria derived from the Action Plan recommendations be given more weight than others? If so, which criteria should be weighted more strongly, and why?
- Are the evaluation forms an accurate translation of the Action Plan's criteria?
- Should the assessment include additional criteria or types of information, and, if so, what?
- Should there be a more detailed assessment of factors affecting readability and legibility for consumers (e.g., type size, style, spacing, contrast)?
- Should the evaluation panel include consumers with varying educational backgrounds? If so, how should they be involved in the evaluation process?
- This report collected patient information from U.S. retail pharmacies. Are there ways to expand sampling to include mail-order or other nonretail pharmacies?

A transcript and summary of the meeting may be seen at the Dockets Management Branch (address above) and they will be available approximately 10 working days after the meeting at a cost of 10 cents per page. Also, received comments may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–3171 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0241]

Determination of Regulatory Review Period for Purposes of Patent Extension; Wallstent Coronary Endoprosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Wallstent Coronary Endoprosthesis and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of

up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Wallstent Coronary Endoprosthesis. Wallstent Coronary Endoprosthesis is indicated for use following suboptimal percutaneous transluminal angioplasty of common and/or external iliac artery stenotic lesions. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Wallstent Coronary Endoprosthesis (U.S. Patent No. 4,954,126) from Boston Scientific Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 9, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Wallstent Coronary Endoprosthesis represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Wallstent Coronary Endoprosthesis is 1,533 days. Of this time, 1,351 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device was begun: July 21, 1994. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective July 21, 1994.

2. The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e): April 1, 1998. The applicant claims March 31, 1998, as the date the premarket approval application (PMA) for Wallstent Coronary Endoprosthesis (PMA P980009) was initially submitted. However, FDA records indicate that PMA P980009 was submitted on April 1, 1998.

3. The date the application was approved: September 29, 1998. FDA has verified the applicant's claim that PMA P980009 was approved on September 29, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 857 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 11, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 9, 2000, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1999.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 00–3172 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0186]

International Conference on Harmonisation; M4 Common Technical Document; Request for Comments on Initial Components; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of initial components of a draft guidance [1] entitled ''M4 Common Technical Document,'' which is being developed under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). Because of the large size of the draft guidance, FDA is making some components of the draft guidance available to the public at this time to help explain the overall scheme of the draft guidance and to request comments. When completed, the guidance entitled ''M4 Common Technical Document'' will describe a harmonized format and content for designated new product applications for submission to the regulatory authorities in the three ICH regions. The agency intends to make the entire draft guidance available to the public for comment once all the components have been drafted.

DATES: Submit written comments on the initial components of the draft guidance by March 13, 2000.

ADDRESSES: Submit written comments on these components of the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. An electronic version of the components is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/publications.htm.

[1] In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), ICH guidance documents are now being called guidances, rather than guidelines.

FOR FURTHER INFORMATION CONTACT: For the safety components: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

For the quality components: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2570, and Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

For the efficacy sections: Robert J. DeLap, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2250.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Therapeutics Products Programme, and the European Free Trade Area.

The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. However, until recently, the application documents in the three ICH regions had not been examined, and there are significantly different requirements in each region for the composition and organization of product applications. As a result, three Expert Working Groups for Quality, Safety, and Efficacy have been developing harmonized guidance for the content and format of common sections of an application, called the ''common technical document.'' Once finalized, the guidance entitled ''M4 Common Technical Document'' will describe an acceptable format and content for applications for human pharmaceuticals that, once supplemented with regional particulars, can be used with designated new products for submission to the regulatory authorities in the three ICH regions.

The ICH Steering Committee is overseeing the work on the common technical document through the use of milestones that reflect the stages of completion as work proceeds. A key goal is to ensure that the process for developing the common technical document is transparent. As part of this transparency, the ICH Steering Committee agreed, in October 1999, that the components of the draft guidance entitled ''M4 Common Technical Document'' be made available for public comment as they evolve. The components being made available by this notice are the product of the Quality, Safety, and Efficacy Expert Working Groups of the ICH. Received comments on these components will be considered by FDA and the appropriate expert working group as the draft guidance ''M4 Common Technical Document'' is finished. Once it is finalized, the guidance entitled ''M4 Common Technical Document'' will describe the format and content for a common technical document that, when supplemented by regional information, is suitable for submission to the regulatory authorities in the three ICH regions.

II. Organization of the Common Technical Document

The common technical document should be viewed as the common part of a submission for designated new products, presented in a modular fashion with summaries and tables. It is intended that one of the modules in the common technical document be reserved as a region-specific module.

The common technical document modular structure is envisioned as shown in the graphic at the end of this document and includes the following:

Components		
Module I	Regional Administrative Information	(*not part of Common Technical Document*)
Module II	IIA Executive Summaries	Quality (pending) Nonclinical (provided) Clinical (pending)
	IIB Nonclinical Summaries	IIB1 Written Summary (provided) IIB2 Tabulated Summary (provided)
	IIC Clinical Summaries, comprising written and tabulated summaries	(pending)
Module III	Quality	(provided—nine attachments pending)
Module IV	Nonclinical Data Study Reports	(provided)
Module V	Clinical Data Study Reports	(provided)

III. Components Being Made Available at This Time

In addition to the preamble to the draft guidance entitled ''M4 Common Technical Document,'' and an organizational graphic, the following components are being made available in the docket and on the Internet at this time:

1. Module IIA—Nonclinical Executive Summary;
2. Module IIB—Nonclinical Written and Tabulated Summaries;
3. Module III—Quality table of contents and explanatory notes (nine attachments still pending);
4. Module IV—Nonclinical Data Study Reports table of contents and explanatory notes; and
5. Module V—Clinical Data Study Reports table of contents and explanatory notes.

These components detail the tables of contents for Modules III, IV, and V accompanied by explanatory notes. Module III will be supplemented further by a series of nine detailed attachments, which may be available in summer of 2000. (The exact content of Module III may evolve as the Expert Working

Group's discussions progress.) Modules IIA Clinical and Quality and IIC should also be available for consultation in summer 2000. Module IIA/B Nonclinical is being made available at this time.

The ICH Steering Committee and Expert Working Groups are requesting comments on the components being made available by this notice. Once all the components of the draft guidance entitled ''M4 Common Technical Document'' are ready, a compiled text will be released to complete step 2 of the ICH process. It is anticipated that this will occur in summer 2000.

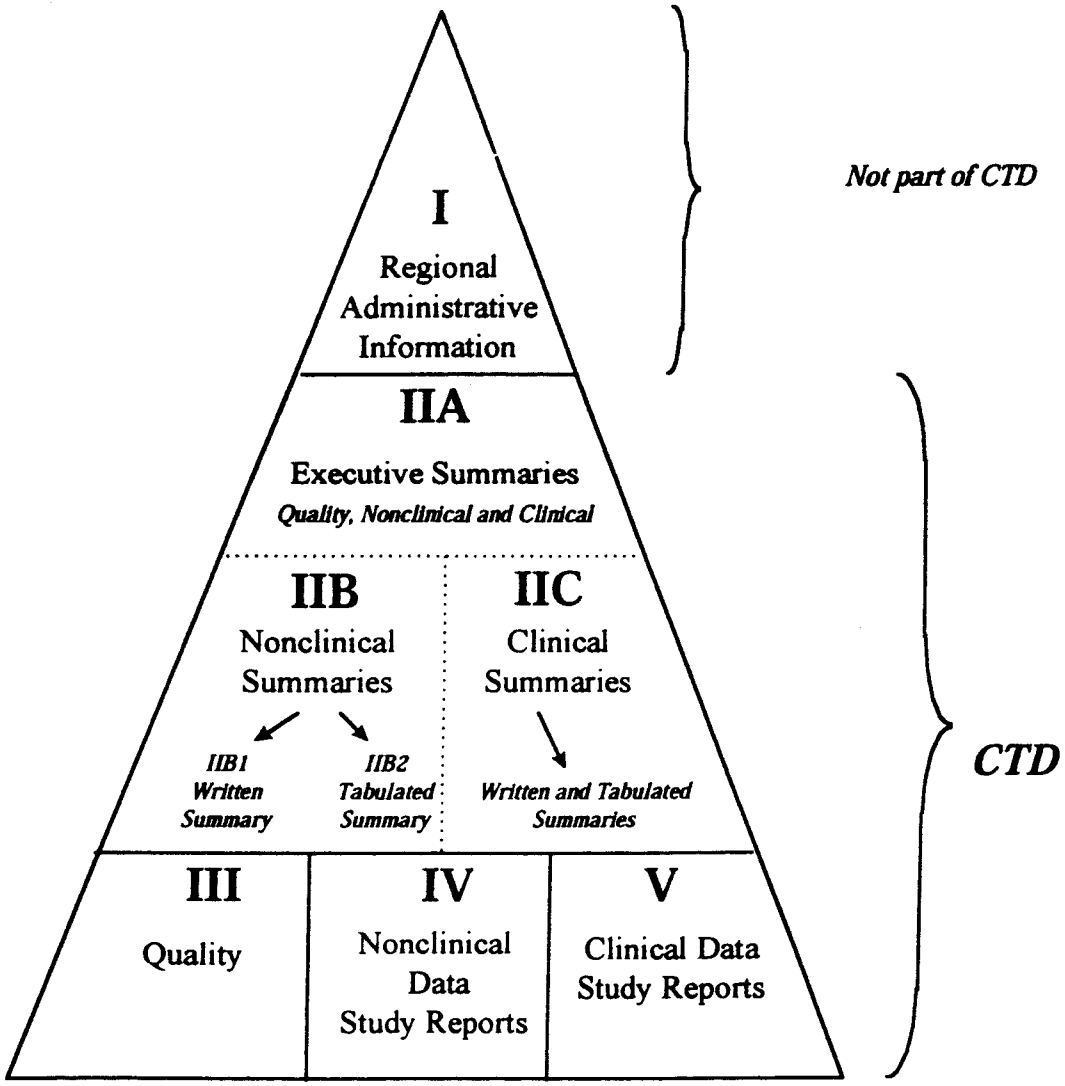
These components of the draft guidance represent the agency's current thinking on the content and format of a common application for designated new products (i.e., the common technical document). These components do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

IV. Comments

Interested persons may, on or before March 13, 2000, submit to the Dockets Management Branch (address above) written comments on these components of the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The components of the draft guidance, made available by this notice, and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

BILLING CODE 4160–01–F

Diagram 1: Diagrammatic Representation of the ICH Common Technical Document



Dated: February 8, 2000.

Margaret Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3343 Filed 2–9–00; 11:32 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0053]

Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme; and Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft guidance documents entitled ''Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme;'' and ''Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals.'' These draft guidance documents are neither final, nor are they in effect at this time. The review prioritization scheme guidance document sets forth factors FDA (we) would consider in categorizing a reprocessed single-use device (SUD) as high, moderate, or low risk. The enforcement priorities guidance document sets forth our priorities for various requirements based on the risk categorization of a device.

DATES: Submit written comments concerning either guidance by April 11, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies (on a 3.5 diskette) of the guidance documents entitled ''Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme'' and ''Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax

your request to 301–443–8818. Submit written comments concerning these guidances to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Regarding ''Reprocessing and Reuse Of Single-Use Devices: Review Prioritization Scheme,'' Barbara C. Zimmerman, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

Regarding ''Enforcement Priorities For Single-Use Devices Reprocessed by Third Parties and Hospitals,'' Larry D. Spears, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4646.

SUPPLEMENTARY INFORMATION:

I. Background

The practice of reprocessing devices that are intended for single-use (SUD's) began in hospitals in the late 1970's. Since that time, the practice has become widespread. We have not regulated original equipment manufacturers (OEM's), third parties, and hospitals that engage in reprocessing SUD's in the same manner. In particular, to date, we have enforced existing premarket submission requirements only against OEM's.

In response to concerns raised by original equipment manufacturers and consumers about safety issues associated with reprocessing SUD's, in the **Federal Register** of November 3, 1999 (64 FR 59782), we announced a proposed strategy on reuse of SUD's. The essence of this proposed strategy was to regulate OEM's, third parties, and hospitals that reprocess SUD's in the same manner.

On December 14, 1999, we held a public meeting to provide the opportunity to interested parties to comment on its proposed strategy. We received comments on the proposed strategy from OEM's, third party reprocessors, health-care professionals, and other interested parties, both during and subsequent to this meeting.

One of the principle components of our proposed strategy was the establishment of agency enforcement priorities concerning regulatory requirements for third party and hospital reprocessors of SUD's. We proposed to prioritize its enforcement activities based on the degree of risk posed by the reprocessing. To accomplish this process, we proposed the following steps:

(1) Develop a list of commonly reused SUD's;

(2) Develop a list of factors to determine the degree of risks associated with reprocessing devices;

(3) Use that list of factors to divide the list of commonly reprocessed SUD's into three categories of risk—high, moderate, and low; and

(4) Develop priorities for enforcement of regulatory requirements for hospitals and third party reprocessors, based on the category of risk (high, moderate, and low).

We received many comments expressing concern that we were proposing to develop a new regulatory system for reprocessed SUD's that was outside of the current classification system under section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) for class I, II, and III devices. We clarified at the meeting that the categorization of devices by risk would be used solely in setting enforcement priorities; it would not entail a process outside of the current classification system.

Under the proposed strategy, devices would still be classified as class I, II, and III and still have premarket notification (510(k)) or premarket approval (PMA) requirements based on that classification. The proposed prioritization scheme would only apply to our enforcement priorities, it would not relate to established premarket submission requirements. For example, if we categorized a certain type of device as high risk under the prioritization scheme, it would mean that we would set the enforcement of regulatory requirements for that device as the highest priority. It would not affect the classification of the device or the type of marketing submission that would be required for that device. If the generic type of that device were class III, we would generally require an approved PMA application before marketing. If the generic type of device were class II, we would require clearance of a 510(k) before marketing. A high risk categorization, therefore, would affect the timing of our enforcement of these requirements rather than the requirements themselves.

We are issuing two companion draft guidance documents that would implement our proposed enforcement strategy:

(1) One draft guidance is entitled ''Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme.'' This draft guidance sets forth factors we would consider in categorizing a reprocessed device as high, moderate, or low risk, which we would use in setting our enforcement priorities. An appendix to the guidance lists commonly reprocessed SUD's, and lists what category of risk we believe a particular device falls within if reprocessed.

On December 9, 1999, we published an earlier version of the guidance document on our Internet site. The **Federal Register** document announcing this earlier draft guidance version was published on February 2, 2000 (65 FR 4985).

The revised draft guidance document incorporates comments we received at the December 14, 1999, public meeting and written submissions, and includes the risk category that we believe a particular device falls within if reprocessed. This revised guidance replaces the earlier version, however, it is a draft guidance that is not in effect at this time.

(2) The other draft guidance document is entitled ''Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals.'' This draft guidance document sets forth our priorities for enforcing various regulatory requirements, based on the categorization of a device, as described in the risk categorization guidance.

II. Significance of Guidance

These guidance documents represent the agency's current thinking on the factors we would consider in categorizing a reprocessed device as high, moderate, or low risk. They also identify how commonly reprocessed devices might be categorized and how this categorization affects the agency's regulatory priorities.

These guidance documents do not create or confer any rights for or on any person and do not operate to bind us or the public.

The agency has adopted Good Guidance Practices (GGP's), which set forth our policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). These guidance documents are issued as Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive these draft guidance documents via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1156– Reprocessing

and Reuse of Single-Use Devices: Review Prioritization Scheme) or (1029–Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of these guidance documents may do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance documents entitled ''Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme'' and ''Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme'' will be available at http://www.fda.gov/cdrh/ODE. ''Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals'' will be available at http://www.fda.gov/cdrh/OC.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written comments regarding these draft guidance documents by April 11, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 8, 2000,

Margaret Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–3345 Filed 2–9–00; 12:28 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2000.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 1, 2000; 9 a.m.–5 p.m.

Place: Parklawn Building,Conference Rooms G&H,5600 Fishers Lane,Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, March 1, 2000, from 9 a.m. to 5 p.m. Agenda items will include, but not be limited to: A presentation on the Government Accounting Office Report, a discussion on exemptions provided under state laws for philosophical and religious reasons in vaccinations; updates from the Department of Justice and the National Vaccine Program Office; and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on March 1, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–1896. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on March 1, 2000. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1896.

Agenda items are subject to change as priorities dictate.

Dated: February 4, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–3170 Filed 2–10–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 16, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Wasington, DC 20007.

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

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.

Date: February 18, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

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.

Date: February 25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chase Room, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, haydenb@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.

Date: February 27, 2000.

Time: 4:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 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: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3253 Filed 2–10–00; 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 meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Name of Committee: President's Cancer Panel.

Date: February 14, 2000.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review 1999 Annual Report and develop questions and agendas for future meetings in 2000.

Place: National Institutes of Health, 31 Center Drive, Building 31C, Room 4A48, Bethesda, MD 20892–2473 (Telephone Conference Call).

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, (301) 496–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the requirement to finalize the 1999 Annual Report and establish future meeting agendas.

(Catalogue of Federal Domestic Assistance Program Nos. 93.293, 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: February 7, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3250 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Mechanism of Human Bladder Carcinogenesis.

Date: February 28–March 1, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton Huntington Hotel, 1401 South Oak Knoll Avenue, Pasadena, CA 91106.

Contact Person: Michael B Small, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(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: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3251 Filed 2–10–00; 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 Program Project Review Committee.

Date: March 23, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 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: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3258 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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, NIDCD.

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 Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, 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, NIDCD.

Date: March 24, 2000.

Open: 8:00 a.m. to 8:30 a.m.

Agenda: Reports from Institute staff.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Closed: 8:30 a.m. to 3:35 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Acting Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3248 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 23, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, N.W., Washington, DC 20008.

Contact Person: Stanley C. Oaks, Jr., Phd, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3249 Filed 2–10–00; 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 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 privacy.

Name of Committee: National Institute of Allergy and infectious Diseases Special Emphasis Panel.

Date: March 1, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Room 2156, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Allen C. Stoolmiller, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(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: February 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3252 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amend (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 of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 17, 2000.

Time: 3:30 pm to 5:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3254 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: March 2–3, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: March 9–10, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Room 6AS25S, 9000 Rockville Pike, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 23–24, 2000.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Hagan, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3255 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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/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 Institute of Dental Research Special Emphasis Panel, 00–25, R 13 Grant.

Date: February 9, 2000.

Time: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 30–00, R13 Review.

Date: February 10, 2000.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–31, Review of R44.

Date: February 25, 2000.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 24–00, Applicant interview P01.

Date: March 1–2, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–23, R01 Review.

Date: March 8, 2000.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–33, Review of grant.

Date: March 21, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–22, Review of R13.

Date: March 29, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3256 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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: NIDR Special Grants Review Committee, Review Comm.

Date: February 17–18, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

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. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3257 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 10, 2000.

Time: 4:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

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, ZRG1 VR–02.

Date: February 14, 2000.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

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.

Date: February 16, 2000.

Time: 1 p.m to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

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: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: February 21–22, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice 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: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.

Date: February 21–22, 2000.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

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.

Date: February 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.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.

Date: February 22, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

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.

Date: February 22, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

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.

Date: February 23–24, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

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: Pathophysiological Sciences Initial Review Group, Lung Biology and Pathology Study Section.

Date: February 23–24, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Preferred Residence, 950 24th St., NW, Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

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: Cardiovascular Sciences Initial Review Group, Cardiovascular Study Section.

Date: February 23–24, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802 Bethesda, MD 20892, (301) 435–1212, johnsong@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: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: February 23–24, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Martin L. Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

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: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.

Date: February 23–25, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

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.

Date: February 23–24, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

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 Emphasis Panel.

Date: February 23, 2000.

Time: 11:00 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

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.

Date: February 23, 2000.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

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.

Date: February 23, 2000.

Time: 5 pm to 7 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sooja K. Kim, PhD, Chief, Nutritional and Metabolic Sciences Initial Review Group, Center for Scientific Review, Naitonal Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

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: Nutritional and Metabolic Sciences Initial Reveiw Group, Nutrition Study Section.

Date: February 24–25, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW, Washington, DC 20008.

Contact Person: Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.

Date: February 24–25, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.

Date: February 24–25, 2000.

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: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 3.

Date: February 24–25, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: February 24–25, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.

Date: February 24–25, 2000.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Cell Development and Function Initial Review Group, International and Cooperative Projects Study Section.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sandy Warren, MPH, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.

Date: February 24–25, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 435–1220.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.

Date: February 24–25, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Bio-

Organic and Natural Products Chemistry Study Section.

Date: February 24–25, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, radtkem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 9 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street NW., Washington, DC 20007.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–25, 2000.

Time: 9 am to 5 pm.

Agenda: To provide concept review of proposed grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, banner@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 24–26, 2000.

Time: 7 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Lee Rosen PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 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: February 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–3259 Filed 2–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–01]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 Plaza, 451 7th Street, SW, Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD ''publish a description of and the cause for administrative actions against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from October 1, 1998 through September 30, 1999.

1. Title I Lenders and Title II Mortgagees That Failed To Comply With HUD/FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

ACTION: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

CAUSE: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

TITLE I.—LENDERS WITHDRAWN

Lender name	City	State
AAMES HOME LOAN	LOS ANGELES	CA
ACCESSIBLE MORTGAGE CORP	PITTSFIELD	MA
ACCURATE REALTY SERVICES INC	ENCINO	CA
ADVANTAGE FINANCIAL INC	CORAL SPRINGS	FL
AFFINITY FINANCE LLC	WALNUT CREEK	CA
AHWATUKEE MORTGAGE INVESTMENT	MESA	AZ
AIR GUARD FEDERAL CREDIT UNION	SIOUX FALLS	SD
ALBANY SAVINGS BANK	ALBANY	NY
ALL FLORIDA MORTGAGE INC	DAVIE	FL
AMERICAN BANTRUST MTG SER CORP	PHOENIX	AZ
AMERICAN DISCOUNT MORTGAGE INC	SCOTTSDALE	AZ
AMERICAN FIDELITY MTG SERVICES INC	NAPERVILLE	IL
AMERICAN FINANCIAL MORTGAGE CORPORATION	KING OF PRUSSIA.	PA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
AMERICAN HOME MTG AND ASSOCIATES LC	PLANTATION	FL
AMERICAN LENDING CORPORATION	PORT ST LUCIE	FL
AMERICAN LIBERTY CAPITAL CORP	NEWPORT BEACH	CA
AMERICAN MARINE BANK	WINSLOW	WA
AMERICAN MORTGAGE COMPANY	NORTH PLATTE	NE
AMERICAN MORTGAGE FIN SVCS INC	COVINGTON	KY
AMERICAN MORTGAGE-LINE INC	ORANGE	CA
AMERICAN NATIONAL BANK UNION SPRINGS	UNION SPRINGS	AL
AMERICAN PACIFIC FUNDING	COLTON	CA
AMERICAN UNITED LENDERS	MISSION VIEJO	CA
AMERICAS FIRST HOME MORTGAGE CO INC	TUCKER	GA
AMERIFIRST MORTGAGE CORP	HEMPSTEAD	NY
AMERILOAN INC	ENGLEWOOD	CO
AMERIMORT FINANCIAL CORPORATION	SOUTH EL MONTE	CA
AMERIVEST MORTGAGE CORPORATION	TAMPA	FL
AMERUS MORTGAGE INC	WEST DES MOINES	IA
ANEW MORTGAGE INC	BAKERSFIELD	CA
ANTELOPE VALLEY MORTGAGE CO INC	LANCASTER	CA
APEX FINANCIAL GROUP INC	STOCKTON	CA
ASSOCIATED BANK NA	NEENAH	WI
ASSOCIATED LENDERS INC	SAN DIEGO	CA
ATLANTIC RICHFIELD CREDIT UN	PASADENA	TX
ATM MORTGAGE CORPORATION	SACRAMENTO	CA
AURORA NATIONAL BANK	AURORA	IL
AVALON LENDING GROUP INC	ALISO VIEJO	CA
BANCO POPULAR NA	LOS ANGELES	CA
BANK OF ASHLAND	ASHLAND	KY
BANK OF BUFFALO	COCHRANE.	WI
BANK OF LAKEWOOD	LAKEWOOD	CA
BANK OF PADEN CITY	PADEN CITY	WV
BANK OF POCAHONTAS	POCAHONTAS	AR
BANK OF WHITMAN	COLFAX	WA
BANKERS MORTGAGE CORPORATION	LOUISVILLE	KY
BANKERS MORTGAGE LENDING GR	DAVIE	FL
BARRON FINANCIAL SERVICE INC	IRVINE	CA
BAS FINANCIAL GROUP INC	FRESNO	CA
BC GROUP INC	ORANGE	CA
BCC CORPORATION	LOUISVILLE	KY
BETHESDA HOSPITAL FEDERAL C U	CINCINNATI	OH
BLAINE STATE BANK	BLAINE	MN
BLUE CHIP MORTGAGE BANKERS CORP	WESTBURY	NY
BLUEFIELDS INTERNATIONAL.	DOWNEY	CA
BOATMEN'S NATIONAL BANK CAPE GIRARDEAU	CAPE GIRARDEU	MO
BOATMEN'S NATIONAL BANK HOT SPRINGS	HOT SPRINGS	AR
BOATMEN'S NATIONAL BANK S ARKANSAS	CAMDEN	AR
CAL-STATE LENDERS INC	ANAHEIM	CA
CALIFORNIA FUNDERS MORTGAGE	RANCHO CUCAMONGA	CA
CAPITAL BANK	CARLSBAD	CA
CAROLINA MORTGAGE BROKERS	GREENSBORO	NC
CENTRAL NATIONAL BJ CANAJOHARIE	CANAJOHARIE	NY
CENTRAL WEST END BANK, FSB	ST LOUIS	MO
CENTURY BANK FSB	SANTA FE	NM
CENTURY FINANCIAL GROUP INC	NEWPORT BEACH	CA
CERTIFIED MORTGAGE BANKERS INC	CORAL GABLES	FL
CHEMICAL BANK BAY AREA	BAY CITY	MI
CHEMICAL BANK MICHIGAN	CLARE	MI
CHEMICAL FINANCIAL SER COR LTD	CLEVELAND	OH
CHESAPEAKE MORTGAGE SERV INC	COLUMBIA	MD
CITIFED DIVERSIFIED INC	SANTA ANA	CA
CITIZENS NATIONAL BANK	HOUSTON	TX
COASTLAND MORTGAGE CORPORATION	CARSON	CA
COLORADO CAPITAL FUNDING INC	IRVINE	CA
COMERICA BANK	DETROIT	MI
COMMERCE BANK PA	DEVON	PA
COMMERCIAL FINANCIAL SERVICES INC	TULSA	OK
COMMERCIAL TRUST AND SAVINGS	MITCHELL	SD
COMMERICIAL FEDERAL BANK	OMAHA	NE
COMMUNITY FIRST BANK	APPLETON CITY	MO
COMMUNITY FIRST NATIONAL BANK	CHEYENNE	WY
COMSTOCK BANK	RENO	NV
CONCORD MORTGAGE COMPANY	PHOENIX	AZ
CONSUMER FUNDING INC	RIVERSIDE	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
CONTINENTAL HOME FUNDING CORP	MIAMI	FL
CORE FINANCIAL GROUP INC	COSTA MESA	CA
CORNERSTONE COMMERCIAL MTG LNS	MESA	AZ
CORNERSTONE LENDING CORPORATION	LOS ANGELES	CA
CORONA MORTGAGE	CORONA	CA
CPAC FINANCIAL CORPORATION	CANYON LAKE	CA
CREDIT MORTGAGE INC	SAN DIEGO	CA
CROSSROADS FUNDING CORP	COVINA	CA
CUSTOM FINANCIAL SERVICES	LONGWOOD	FL
CUYAHOGA SAVINGS ASSN	CLEVELAND	OH
D AND E MORTGAGE CORP	TAMPA	FL
DACOTAH BANK	ABERDEEN	SD
DENNIS JOSLIN COMPANY LL LLC	DYERSBURG	TN
DOMINION FINANCIAL SERVICES INC	LAKE WORTH	FL
DULANEY NATIONAL BANK	MARSHALL	IL
DYNAMIC FINANCIAL CORP	HIALEAH	FL
EASTERN BANK	LYNN	MA
EASTERN RESIDENTIAL MORTGAGE	BALTIMORE	MD
EASTLAND MORTGAGE CORPORATION	MISSION VIEJO	CA
EMPIRE MORTGAGE CORPORATION	MEMPHIS	TN
ENVOY CAPITAL CORP	TORRANCE	CA
EPOCH ENTERPRISES INC	SOLANA BEACH	CA
EQUITRUST MORTGAGE CORPORATION	GULFPORT	MS
ERIE SHORE MORTGAGE	ELYRIA	OH
EVERGREEN MORTGAGE CORPORATION	GRAND RAPIDS	MI
EXCEL BANK	EDINA	MN
EXCHANGE BANK	MILLEDGEVILLE	GA
EZ LENDING INC	FT LAUDERDALE	FL
F AND M BANK MASSANUTTEN NA	HARRISONBURG	VA
FAIRMONT FEDERAL CREDIT UNION	FAIRMONT	WV
FAITH FINANCIAL GROUP	MIAMI LAKES	FL
FCM CORPORATION DBA FINANCIAL CENTER MTG	NEWHALL	CA
FEDERAL FINANCE CORPORATION	CHICAGO	IL
FEDERAL MORTGAGE FUNDING	LEMON GROVE	CA
FEDERAL STANDARD MTG BKING CORP	LITTLE NECK	NY
FEDERATED MORTGAGE COMPANY INC	COVINA	CA
FIDELITY BOND AND MORTGAGE COMPANY.	BLUE BELL	PA
FINANCE PLUS MORTGAGE CORP	TEMECULA	CA
FINANCIAL SERV MORTGAGE CORP	IRVINE	CA
FIRST ALLIANCE MORTGAGE COMPANY	BLOOMFIELD HILLS	MI
FIRST BANK	CREVE COEUR	MO
FIRST CAPITAL FINANCIAL CORP	REDONDO BEACH	CA
FIRST CENTURY BANK NA	BLUEFIELD	WV
FIRST CHOICE BANK	GREELEY	CO
FIRST CLASS AMERICAN CU	FORT WORTH	TX
FIRST COMMERCIAL BANK NA	LITTLE ROCK	AR
FIRST FEDERAL SAVINGS BANK-COLORADO	LAKEWOOD	CO
FIRST FINANCIAL MORTGAGE CORP	AKRON	OH
FIRST GOVERNMENT MORTGAGE AND INV CORP	LANDOVER	MD
FIRST GUARANTY MORTGAGE CORPORATION	MCLEAN	VA
FIRST HOME SAVINGS BANK	PENNS GROVE	NJ
FIRST ILLINOIS BANK	E ST LOUIS	IL
FIRST INVESTORS MORTGAGE CORP	MIAMI	FL
FIRST MORTGAGE GROUP LLC	MARIETTA	GA
FIRST NATIONAL BANK	KILLEEN	TX
FIRST NATIONAL BANK	BOWBELLS	ND
FIRST NATIONAL BANK	GLEN HEAD	NY
FIRST NATIONAL BANK	CRYSTAL FALLS	MI
FIRST NATIONAL BANK	TEMPLE	TX
FIRST NATIONAL BANK	PARSONS	KS
FIRST NATIONAL BANK	MISSOURI CITY	TX
FIRST NATIONAL BANK	LAS ANIMAS	CO
FIRST NATIONAL BANK	WILLIAMSOM	WV
FIRST NATIONAL BANK CONWAY	CONWAY	AR
FIRST NATIONAL BANK EVERGREEN PARK	EVERGREEN PARK	IL
FIRST NATIONAL BANK GRAPEVIEW	GRAPEVINE	TX
FIRST NATIONAL BANK IN CANNON FALLS	CANNON FALLS	MN
FIRST NATIONAL BANK OF CENTRAL FLORIDA	LONGWOOD	FL
FIRST NATIONAL BANK-CHICAGO	CHICAGO	IL
FIRST POTOMAC MORTGAGE CORPORATION	FAIRFAX	VA
FIRST PREFERENCE MGT CORP	BALTIMORE	MD
FIRST QUALITY FUNDING INC	WALNUT CREEK	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
FIRST SAVINGS BANK SLA	BAYONNE	NJ
FIRST SECURITY MORTGAGE CORP	COLUMBIA	SC
FIRST SELECT FINANCIAL INC	DOWNEY	CA
FIRST STATE BANK	HONEY GROVE	TX
FIRST STATE BANK	PARAMOUNT	CA
FIRST STORY MORTGAGE CORPORATION	RANCHO CUCAMONGA	CA
FIRST TOWN MORTGAGE CORPORATION	ATLANTA	GA
FIRST TRUST FINANCIAL INC	RANDOLPH	MA
FIRST TRUST OF ILLINOIS	CHICAGO	IL
FIRSTAR BANK NA	OWENSBORO	KY
FIRSTPLUS FINANCIAL INC	DALLAS	TX
FIRSTPLUS INVESTMENT CORP	DALLAS	TX
FIRSTRUST SAVINGS BANK	PHILADELPHIA	PA
FLAGSHIP FEDERAL SAVINGS BANK	SAN DIEGO	CA
FREEDOM LENDING CENTER INCORPORATED	CASSELBERRY	FL
FREMONT INVESTMENT AND LOAN	ANAHEIM	CA
FTF MORTGAGE CORPORATION	IRVINE	CA
FULLERTON MORTGAGE ESCROW CO	OCEANSIDE	CA
GELT FINANCIAL CORPORATION	SOUTHHAMPTON	PA
GERING STATE BANK AND TRUST CO	GERING	NE
GLEN ROCK SAVINGS AND LOAN ASSOC	GLEN ROCK	NJ
GLENDORA MORTGAGE INC	GLENDORA	CA
GML MORTGAGE INC	SACRAMENTO	CA
GOLD COAST FUNDING GROUP INC	DAVIE	FL
GOLDEN INVESTMENTS OF AMERICA INC	SAN MARINO	CA
GOLDENWEST CREDIT UNION	OGDEN	UT
GRACO EMPLOYEES CREDIT UNION	MINNEAPOLIS	MN
GREAT FIVE PERCENT REAL EST CO	COVINA	CA
GREAT PLAINS PROVISIONERS CR U	OMAHA	NE
GUARANTY FEDERAL SAVINGS BANK	DALLAS	TX
GULF FINANCIAL SERVICES INC	BLAIRSVILLE	GA
H AND R MORTGAGE INC	BAKERSFIELD	CA
HALLMARK GOVERNMENT MORTGAGE INC	BELLEVUE	WA
HARBOR FINANCIAL MORTGAGE CORP	HOUSTON	TX
HARBOR VIEW MORTGAGE INC	NEWPORT BEACH	CA
HEALTH EMPLOYEES FEDERAL CR UN	ALBANY.	NY
HERITAGE BANK NA	WILLMAR	MN
HERSHEY STATE BANK	HERSHEY	NE
HOLMGREN AND ASSOCIATES	OAKLAND	CA
HOME LOAN ASSISTANCE CENTER INC	ALTAMONT SPRINGS	FL
HOME LOANS INC	MIAMI	FL
HOME MORTGAGE INC	PHOENIX	AZ
HOMEOWNERS MORTGAGE AND EQUITY INC	AUSTIN	TX
HOMESTEAD REAL ESTATE FINANCING INC	SAN RAMON	CA
HURON NATIONAL BANK	ROGERS CITY	MI
IDEAL FINANCIAL CORPORATION	ELLICOTT CITY	MD
IMAGE MORTGAGE INC	TEMECULA	CA
INDEPENDENT CONSUMER MTG CORP	GAINESVILLE	GA
INTERCOASTAL MORTGAGE CO AND ASSOC INC	ORLANDO	FL
JANDEL GROUP LLC	SCOTTS DALE	AZ
JONATHAN FUNDING GROUP INC	MARINA DEL REY	CA
JP MORTGAGE INC	NORTH MIAMI	FL
JUDITH O SMITH MORTGAGE GROUP INC	FORT WORTH	TX
KENNETT NATIONAL BANK	KENNETT	MO
KENNY FINANCIAL SERVICES INC	WEST CHESTER	PA
KERMIT STATE BANK	KERMIT	TX
KEY MORTGAGE CORPORATION	EDINA	MN
KEYBANK NA	SEATAC	WA
KEYBANK NATIONAL ASSOCIATION	FORT COLLINS	CO
KEYSTONE MORTGAGE CORP INC	KEYSTONE	WV
LAD FINANCIAL.	SAN DIEGO	CA
LBVAMC FEDERAL CREDIT UNION	LONG BEACH	CA
LEHMAN BROTHERS HOLDINGS INC	NEW YORK	NY
LEXINGTON SAVINGS BANK	LEXINGTON	MA
LIBERTY FINANCIAL R E FUNDING CORP	CLEARWATER	FL
LIDD ENTERPRISES INC	PASADENA	CA
LOAN SOURCE ONE FUNDING INC	WALNUT	CA
MAGNUM CAPITAL GROUP INC	MONARCH BEACH	CA
MARATHON HOME LENDING	TUSTIN	CA
MARICOPA SANTA FE FED C U	PHOENIX	AZ
MASTERS FUNDING GROUP INC	RIVERSIDE	CA
MAXIMA FINANCIAL GROUP	TEMPE	AZ

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
MEDALLION MORTGAGE CO	SCOTLAND	CT
MELLON BANK DE NA	WILMINGTON	DE
MERCANTILE BANK ARKANSAS	NORTH LITTLE ROCK	AR
METRO MORTGAGE CORPORATION	COLUMBIA	SC
METROPOLITAN FINANCIAL INC	ORANGE	CA
METROPOLITAN HOME MORTGAGE CORP OF NY	EAST NORWICH	NY
MICAL MORTGAGE	SAN DIEGO	CA
MICHIGAN NATIONAL BANK	FARMINGTON HILLS	MI
MIDAMERICA BANK NORTH	PHILLIPS	WI
MIDAMERICA BANK STOUGHTON	STOUGHTON	WI
MIDWEST AMERICA FINANCIAL CORPORATION	CHICAGO	IL
MINNWEST BANK	DAWSON	MN
MISSION NATIONAL BANK	SAN FRANCISCO	CA
MONEYLINE FINANCIAL SERVICES INC	ST LOUIS	MO
MORNING STAR REAL EST AND MTG FIN CORP	MASSAPEQUA	NY
MORTGAGE CENTER CORPORATION	MILLBRAE	CA
MORTGAGE ENTERPRISES INC	LYONS	IL
MORTGAGE FEDERAL CORPRORATION	CLEVELAND	OH
MORTGAGE NETWORK INC	SALT LAKE CITY	UT
MORTGAGE SERVICE CENTER OF SOUTH FLORIDA	TAMARAC	FL
MOUNTAIN NATIONAL BANK	WOODLAND PARK	CO
MUNDACA FINANCIAL SERVICES LLC	FRANKLIN	TN
MUNICIPAL CREDIT UNION	NEW YORK	NY
MUTUAL FEDERAL SAVINGS BANK	ATLANTA	GA
MUTUAL SAVINGS ASSO	LEAVENWORTH	KS
NATIONAL BANK OF CALIFORNIA.	LOS ANGELES	CA
NATIONAL EQUITY CORPORATION	IRVINE	CA
NATIONAL HOME MORTGAGE BANKING CORP	HAUPPAUGE	NY
NATIONAL SECURITY BANK	PORTLAND	OR
NAVIGATION BANK	HOUSTON	TX
NBD BANK NA	DETROIT	MI
NEIGHBORHOOD HOUSING SERVICES	NEW YORK	NY
NEVADA FEDERAL FINANCIAL CORP	LAS VEGAS	NV
NEW HOMES MORTGAGE INC	SHERMAN OAKS	CA
NOREAST MORTGAGE CORPORATION	ONTARIO	CA
NORTH FORK FINANCIAL INC	NEWPORT BEACH	CA
NORTH PACIFIC BANK	TACOMA	WA
NORTH VIEW MORTGAGE INC	POWAY	CA
NORTHERN FINANCIAL MTG CO.	CHAGRIN FALLS	OH
NORTHERN STATES POWER ST PAUL CU	SAINT PAUL	MN
NORWEST BANK TEXAS NA	SAN ANTONIO	TX
OLD REDWOOD MORTGAGE COMPANY.	SANTA ROSA	CA
ON-LINE MORTGAGE EXPRESS	UPLAND	CA
OREGON FEDERAL CREDIT UNION	COQUILLE	OR
OREGONIAN FEDERAL CREDIT UN	PORTLAND	OR
ORNL FEDERAL CREDIT UNION	OAK RIDGE	TN
P F G INC	ENCINO	CA
PACIFIC BAY BANK	SAN PABLO	CA
PACIFIC EMPIRE FUNDING	LAKE FOREST	CA
PACIFIC MUTUAL FUNDING INC	BREA	CA
PALACE CITY FEDERAL C U	MITCHELL	SD
PARISH BANK TRUST COMPANY	MOMENCE	IL
PENN FEDERAL SAVINGS BANK	WEST ORANGE	NJ
PENNIES TO MILLIONS INC	UPLAND	CA
PEOPLES MORTGAGE CORPORATION	LIVINGSTON	NJ
PERRY STATE BANK	PERRY	MO
PHOENIX HOME LENDING INC	TEMPE	AZ
PIONEER ENTERPRISE CORPORATION	SUGAR LAND	TX
PIONEER FINANCIAL INC	CHATTANOOGA	TN
PIONEER MORTGAGE INC	HADDON HEIGHTS	NJ
PIONEER SAVINGS AND LOAN ASSN FSLA	IRVINE	CA
PLATINUM MORTGAGE INC.	ROSEVILLE	MN
PLAZA CAPITAL CORP	SANTA FE	NM
POLLARI WRIGHT INC	SAN JOSE	CA
PREFERRED CREDIT CORPORATION	IRVINE	CA
PREFERRED FUNDING CORP	FORT LAUDERDALE	FL
PRESERV FINANCIAL INC	DENVER	CO
PRESTIGE FINANCIAL SVCS CORP	DEERFIELD BEACH	FL
PRIME FINANCIAL NETWORK INC	LA JOLLA	CA
QUALITY FINANCING CORP	CHICAGO	IL
QUEEN CITY FEDERAL SAVINGS BANK	VIRGINIA	MN
R K MAGUIRE INC	DANA POINT	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
REFCO MORTGAGE AND FINANCIAL SER INC	CHICAGO	IL
REI INC	ORANGE	CA
REPUBLIC MORTGAGE CORPORATION	NAMPA	ID
RES-COM MORTGAGE CORP	NILES	IL
RESIDENTIAL MORTGAGE NETWORK INC	CEDAR RAPIDS	IA
REV CORP	NORTHBROOK	IL
RICK BAILEY MORTGAGE UNLIMITED INC	ARCATA	CA
ROXBURY-HIGHLAND CO-OPERATIVE	JAMAICA PLAIN	MA
RUSHMORE STATE BANK	RAPID CITY	SD
S MORTGAGE CORPORATION	FAIR OAKS	CA
SACVAL MORTGAGE CORPORATION	CITRUS HEIGHTS	CA
SAND DOLLAR MORTGAGE SER INC	CHINO	CA
SASCO INC	ENCINO	CA
SECURITY BANK	MADISON	SD
SECURITY BANK AND TRUST CO.	LAWTON	OK
SECURITY FIRST FUNDING	COVINA	CA
SECURITY MORTGAGE CORP OF MISS	JACKSON	MS
SOCIETY FINANCIAL CORP	FARMINGTON	CT
SOUTH PLAINS FEDERAL CU	LUBBOCK	TX
SOUTH TEXAS NATIONAL BANK	LAREDO	TX
SOUTHERN STATES FUNDING	WINTER PARK	FL
SOUTHFORK MORTGAGE COMPANY CORP	RIVERSIDE	CA
SOUTHWEST BENEFICIAL FIN INC	DALLAS	TX
SOUTHWEST KANSAS NATIONAL BANK	ULYSSES	KS
SOVEREIGN BANK FSB	WYOMISSING	PA
SPARTAN MORTGAGE INC	SAVANNAH	GA
SPECTRUM MORTGAGE CORP	ENGLEWOOD	CO
STALLION CAPITAL INC	RANCHO CUCAMONGA.	CA
STATE CAPITOL FEDERAL CU	SAINT PAUL	MN
STATE CENTER CREDIT UNION	FRESNO	CA
STATEWIDE FUNDING INC	WOODLAND HILLS	CA
STATEWIDE VENTURES	GRASS VALLEY	CA
STELLAR INVESTMENTS FINAN SERV	BREA	CA
STUART-WRIGHT MTG FUNDING CORP	MURRAY	UT
SULLIVAN AND MOCK CORP OF-NEV	LAS VEGAS	NV
SUN COUNTRY BANK	APPLE VALLEY	CA
SUN HARBOR MORTGAGE INC	SAN DIEGO	CA
SUN PACIFIC FUNDING INC	SANTA ANA	CA
SUNTRUST FINANCIAL CORP	HOLLYWOOD	FL
SUNWEST BANK OF SANTA FE	SANTA FE	NM
TAMMAC CORPORATION	WILKES-BARRE	PA
TCS MORTGAGE INC	SAN DIEGO	CA
TENNESSEE BANK AND TRUST	MEMPHIS	TN
THE FEDERAL SAVINGS BANK	WALTHAM	MA
THE FIRST NATIONAL BANK	PORTAGE	WI
THE FIRST NATIONAL BANK	LA JARA	CO
THE-BANK-FIRST CITIZENS BANK	CLEVELAND	TN
THE-NORTHERN TRUST COMPANY	CHICAGO	IL
TMMG INC	LAGUNA HILLS	CA
TOOELE FEDERAL CREDIT UNION	TOOELE	UT
TREASURE COAST MORTGAGE CORP	PORT ST LUCIE	FL
TREO FUNDING	LAKE OSEWGO	OR
TURNER MORTGAGE CORPORATION	MIAMI LAKES	FL
U S EMPLOYEES CREDIT UNION	HOUSTON	TX
U S MORTGAGE INC	LITTLE ROCK	AR
UBS MORTGAGE FINANCE INC	NEW YORK	NY
UNIFED MORTGAGE CORP	ESCONDIDO	CA
UNION FEDERAL MORTGAGE INC	IRVINE	CA
UNION PLANTERS BANK MID-MO.	COLUMBIA	MO
UNITED HOME LENDING SERVICES INC	CHARLESTON	WV
UNITED LENDING COMPANIES INC	RAMSEY	NJ
UNIVERSAL MORTGAGE INC	JACKSONVILLE	FL
UNIVERSITY MORTGAGE INC	CHEVY CHASE	MD
US CREDIT CORP	AURORA	CO
US LENDS	ORANGE	CA
US MORTGAGE CONSULTANTS INC	LAS VEGAS	NV
USA MORTGAGE CORP	ELMWOOD PARK	IL
VANGUARD LENDING GROUP	ATASCADERO	CA
VILLA PARK TRUST AND SAVINGS	VILLA PARK	IL
W D WICKLEY INC	RANCHO CUCAMONGA	CA
WALL STREET FUNDONG GROUP	RANCHO CUCAMONGA	CA
WEALTHWISE INVESTMENT CORP	MILPITAS	CA

TITLE I.—LENDERS WITHDRAWN—Continued

Lender name	City	State
WESTERN CAPITAL FUNDING INC	WILDOMAR	CA
WESTERN HOME MORTGAGE CORP	IRVINE	CA
WESTERN NATIONAL FUNDING INC	NEWPORT BEACH	CA
WESTMINSTER MORTGAGE CORPORATION	ATLANTA	GA
WESTSTAR FINANCIAL GROUP INC	SAN DIEGO	CA
WESTWIND FINANCIAL CORPORATION	HUNTINGTON BEACH	CA
WOHLETZ ENTERPRISES INC	KIRKLAND	WA

TITLE II.—MORTGAGEES WITHDRAWN

Mortgagee name	City	State
A AND C MORTGAGE CORPORATION	NORTH CHARLESTON	SC
A B C BANK	CHICAGO	IL
A ONE MORTGAGE CORP	MIAMI	FL
A–PAN–AMERICAN MORTGAGE GROUP	CHICAGO	IL
AAACTION MORTGAGE INC	FREMONT	CA
AAMBASSADOR MORTGAGE SVCS CORP	PALOS HEIGHTS	IL
ABSOLUTE ACCEPTANCE FINANCIAL CO LLC	SOUTHFIELD	MI
ABSOLUTE FINANCIAL CORPORATION	BLUE BELL	PA
ACACIA MORTGAGE	GREENWOOD VILLAGE	CO
ACCENT MORTGAGE INC	ZACHARY	LA
ACCURATE REALTY SERVICES INC	ENCINO	CA
ADAM MORGTAGE COMPANY	BRYAN	TX
ADVANCED FINANCIAL INC	ARVADA	CO
ADVANCED HOME LOAN INC	ROUND ROCK	TX
ADVANTAGE FINANCIAL FUNDING CORPORATION	EXTON	PA
ADVANTAGE FINANCIAL INC	TAMATAC	FL
ADVANTAGE REAL ESTATE LOANS INC	ARROYO GRANDE	CA
AHMANSON MORTGAGE COMPANY	TIGARD	OR
AJA FINANCIAL LLC	MIDDLESEX	NJ
ALL STATE MORTGAGE SERVICES INC	COLORADO SPRINGS	CO
ALLEGIANCE MORTGAGE CORP LLC	ATLANTA	GA
ALLIED FINANCIAL SERVICES INC	BIRMINGHAM	AL
ALPHA CAPITAL FINANCIAL INC	WOODLAND HILLS	CA
AMERICAN BANKER DIVERS LENDING	LA CRESCENTA	CA
AMERICAN CHOICE MORTGAGE CORP	MIAMI	FL
AMERICAN EAGLE LENDING SRVS	PROVO	UT
AMERICAN EAGLE MORTGAGE CORP	CLEVELAND	OH
AMERICAN FEDERAL BANK FSB	GREENVILLE	SC
AMERICAN FINANCIAL MORTGAGE CORP	KING OF PRUSSIA	PA
AMERICAN HOME FINANCE INC	PALATINE	IL
AMERICAN HOME LENDERS CORP	SAN MARCOS	CA
AMERICAN LENDING CORPORATION	PORT ST LUCIE	FL
AMERICAN MONEY MARKET INC	HIALEAH	FL
AMERICAN MORTGAGE—FINANCIAL SVCS INC	COVINGTON	KY
AMERICAN MORTGAGE INV SVCS INC	POOLER	GA
AMERICAN MORTGAGE–LINE INC	ORANGE	CA
AMERICAN NATIONAL MORTGAGE CORP	TOTOWA	NJ
AMERICAN NATIONAL SAVINGS ASSO	BALTIMORE	MD
AMERICAN PACIFIC FUNDING	COLTON	CA
AMERICAN RESIDENTIAL FUNDING INC	SANTA ANA	CA
AMERICAN UNITED LENDERS INC	MISSION VIEJO	CA
AMERIFIRST MORTGAGE CORP	HEMPSTEAD	NY
AMPHIBIOUS BASE FEDERAL CR UNION	NORFOLK	VA
AMSTERDAM SAVINGS BANK	AMSTERDAM	NY
APEX MORTGAGE LLC	OREM	UT
APLEND COMPANY	BROOKS	ME
ARBORETUM MORTGAGE CORP	SEATTLE	WA
ARKANSAS FIDELITY MORTGAGE CORP	LITTLE ROCK	AR
ASPEN MORTGAGE BROKERS LC	OGDEN	UT
ASSOCIATED LENDERS INC	SAN DIEGO	CA
ASSURANCE CAPITAL MORTGAGE LLC	TULSA	OK
ATLANTIC STATES FINANCIAL INC	TAMARAC	FL
ATLANTIC TRUST MORTGAGE	MIAMI	FL
BANCO POPULAR NA	LOS ANGELES	CA
BANCTRUST INC	CHICAGO	IL
BANK OF ARIZONA	SCOTTSDALE	AZ
BANK OF ASHLAND	ASHLAND	KY
BANK OF BELFAST—MARSHALL CNTY	LEWISBURG	TN
BANK OF COLORADO WESTERN SLOPE	GRAND JUNCTION	CO

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
BANK OF FRANKLIN	MEADVILLE	MS
BANK OF GWINNETT COUNTY	LAWRENCEVILLE	GA
BANK OF MATTESON	MATTESON	IL
BANK OF NEW MEXICO ALBUQUERQUE	ALBUQUERQUE	NM
BANK OF SANTA MARIA	SANTA MARIA	CA
BANK OF SUMNER	SUMNER	WA
BANK OF UNION	MONROE	NC
BANK OF–SOUTH WINDSOR	SOUTH WINDSOR	CT
BANKERS AFFILIATED MORTGAGE	RIVERSIDE	CA
BANKERS DIRECT MORTGAGE CORP	WEST PALM BEACH	FL
BANKERS MUTUAL MORTGAGE INC	NEWPORT BEACH	CA
BANKERS SAVINGS BANK	CORAL GABLES	FL
BANKFIRST	KNOXVILLE	TN
BCC CORPORATION INC	LOUISVILLE	KY
BELFORD PARTNERS INC	DENVER	CO
BELMONT SAVINGS BANK	BELMONT	MA
BENCHMARK FED SAV BANK	CINCINNATI	OH
BENEFICIAL NATIONAL BANK	WILMINGTON	DE
BENEFIT MORTGAGE CORPORATION	CAMP SPRINGS	MD
BERKSHIRE LIFE INSURANCE CO	PITTSFIELD	MA
BEST MORTGAGE CORPORATION	HARKER HEIGHTS	TX
BEVERLY NATIONAL BANK	WILMINGTON	IL
BLUE CHIP MORTGAGE BANKERS CORP	WESTBURY	NY
BOATMEN'S FIRST NATIONAL BANK–AMARILLO	AMARILLO	TX
BOATMEN'S NATIONAL BANK BATESVILLE	BATESVILLE	AR
BOATMEN'S NATIONAL BANK CAPE GIRARDEAU	CAPE GIRARDEAU	MO
BOATMEN'S NATIONAL BANK N CENTRAL AR	HARRISON	AR
BOATMEN'S RIVER VALLEY BANK	LEXINGTON	MO
BROWARD SCHOOLS DIST CU	LAUDERHILL	FL
BROWNSVILLE DEPOSIT BANK	BROWNSVILLE	KY
BUCKS COUNTY MORTGAGE CORPORATION	NEWTON	PA
BUY OWNER MORTGAGE COMPANY	TAMPA	FL
CAL PLAZA MORTGAGE COMPANY	SAN DIEGO	CA
CALIFORNIA CAPITAL MORTGAGE	SACRAMENTO	CA
CALIFORNIA FUNDERS MTG	ONTARIO	CA
CAPRI MORTGAGE CAPITAL LLC	CHICAGO	IL
CAREY KRAMER CO N FL	TAMPA	FL
CAROLD CORP	NEW YORK	NY
CAROLINA CAPITAL MARKETS LLC	COLUMBIA	SC
CAYUGA MORTGAGE COMPANY	ITHACA	NY
CBS MORTGAGE CORP	HOUSTON	TX
CERRITOS VALLEY BANK	NORWALK	CA
CHANNEL ISLANDS NATIONAL BANK	OXNARD	CA
CHASE MORTGAGE SERVICES INC	TAMPA	FL
CHEMICAL BANK BAY AREA	BAY CITY	MI
CHEYENNE WESTERN BANK	ASHLAND	MT
CHINA TRUST BANK NEW YORK	NEW YORK	NY
CITIFED DIVERSIFIED INC	SANTA ANA	CA
CITIZENS BANK	COLLIERVILLE	TN
CITIZENS BANK	CARTHAGE	TN
CITIZENS BANK AND TRUST CO	HUTCHINSON	MN
CITIZENS CORPORATION MORTGAGE	FRANKLIN	TN
CITIZENS NATIONAL BANK	TELL CITY	IN
CITY NATIONAL BANK OF PITTSBURG	PITTSBURG	KS
CLAYTON NATIONAL INC	SHELTON	CT
COASTAL FEDERAL MORTGAGE CO	MANALAPAN	NJ
COASTAL FEDERAL MORTGAGE INC	MYRTLE BEACH	SC
COASTAL MORTGAGE COMPANY	PARMA	OH
COASTLAND MORTGAGE CORPORATION	CARSON	CA
COLOMBO SAVINGS BANK FSB	BETHESDA	MD
COLONIAL BANK ST LOUIS	DES PERES	MO
COLORADO CAPITAL FUNDING CORP	ENGLEWOOD	CO
COMMERCIAL BANK	SALEM	OR
COMMERCIAL BANK OF NEVADA	LAS VEGAS	NV
COMMERCIAL FINANCIAL SERVICES INC	TULSA	OK
COMMONPOINT MORTGAGE COMPANY	KENTWOOD	MI
COMMUNITY BANK	STAUNTON	VA
COMMUNITY FEDERAL SAVINGS ALA	TUPELO	MS
COMMUNITY FIRST MORTGAGE INC	SAN LUIS OBISPO	CA
COMMUNITY FIRST NATIONAL BANK	CHEYENNE	WY
COMMUNITY LENDERS GROUP	DULUTH	GA
COMMUNITY NATIONAL BANK NJ	MARLTON	NJ

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
COMPASS BANK	SAN ANTONIO	TX
COMPASS BANK FSB	FORT WALTON BEACH	FL
CONCEPT CAPITAL MORTGAGE CORPORATION	CANYON COUNTRY	CA
CONSUMER DIRECT MORTGAGE INC	DALLAS	TX
CONSUMERS CHOICE MORTGAGE CORP	DELRAN	NJ
CONTINENTAL GENERAL MORTGAGE	BALTIMORE	MD
CONTINENTAL HOME FUNDING CORP	MIAMI	FL
CORE FINANCIAL GROUP INC	COSTA MESA	CA
CORNERSTONE LENDING CORP	LOS ANGELES	CA
CREDIT UNION MORTGAGE COMPANY	PORTAGE	MI
CRESCENT CREDIT UNION	BROCKTON	MA
CROSS COUNTY FEDERAL SAVINGS BANK	MIDDLE VILLAGE	NY
CROSSROADS FUNDING CORP	COVINA	CA
D AND E MORTGAGE CORP	TAMPA	FL
DALLAS PLANNING GROUP	WAXAHACHIE	TX
DALLAS POSTAL CREDIT UNION	DALLAS	TX
DEGEORGE CAPITAL CORP	CHESHIRE	CT
DELMAR MORTGAGE INC	BOCA RATON	FL
DENNIS JOSLIN COMPANY LL LLC	DYERSBURG	TN
DEPOSIT GUARANTY MORTGAGE CO	JACKSON	MS
DEPOSIT GUARANTY MORTGAGE SERV	JACKSON	MS
DESERT SERVICES INC	RICHLAND	WA
DESTIN BANK	DESTIN	FL
DEUEL COUNTY NATIONAL BANK	CLEAR LAKE	SD
DIADCO FINANCIAL SERVICES INC	COVINA	CA
DIME SAVINGS BANK	NORWICH	CT
DIME SAVINGS BANK WALLINGFORD	WALLINGFORD	CT
DIMENSIONS MORTGAGE CORP	SAN DIEGO	CA
DIVERSIFIED EQUITIES INC	BATTLEGROUND	WA
DOLPHIN MORTGAGE CO	MIAMI	FL
DRAPER AND KRAMER INC	CHICAGO	IL
DRH MORTGAGE COMPANY LTD	PLANO	TX
DRUMMOND COMMUNITY BANK	CHIEFLAND	FL
DUCHESNE BANK	ST PETERS	MO
DYNAMIC FINANCIAL CORP	HIALEAH	FL
EAGLE MORTGAGE CORPORATION	WOODBURY	MN
EASTERN MORTGAGE SERVICES INC	TREVOSE	PA
EASTERN RESIDENTIAL MORTGAGE	COLUMBIA	MD
EASTON MORTGAGE CORPORATION	SAN FRANCISCO	CA
EDGE FINANCIAL CORPORATION	AURORAE	CO
EINBINDER MANAGEMENT MORTGAGE CORP	MATAWAN	NJ
ELVERSON NATIONAL BANK	ELVERSON	PA
ENTERPRISE MORTGAGE CORPORATION	APOPKA	FL
EPOCH ENTERPRISES INC	SOLANA BEACH	CA
EQUIFUND MORTGAGE CORPORATION	CAPE CANAVERAL	FL
EQUITABLE LIFE ASSUR SOC	ATLANTA	GA
EQUITABLE REAL ESTATE INV MNGT	ATLANTA	GA
EQUITRUST MORTGAGE CORPORATION	GULFPORT	MS
EVERGLADES FEDERAL CU	CLEWISTON	FL
EXECUTIVE FIRST MORTGAGE CORP	FRESNO	CA
EXPERT MORTGAGE BROKERS LLC	VANCOUVER	WA
EZ LENDING INC	LAUDERHILL	FL
FAMILY BANK FSB	PAINTSVILLE	KY
FARMERS AND MERCHANTS BANK	PRAIRIE GROVE	AR
FARMERS AND MERCHANTS BANK	HURON	SD
FARMERS NATIONAL BANK	SCOTTSVILLE	KY
FARMERS NATIONAL BANK	DANVILLE	KY
FEDERAL FINANCE CORPORATION	CHICAGO	IL
FEDERAL SAVINGS BANK	WALTHAM	MA
FEDERATED MORTGAGE COMPANY INC	COVINA	CA
FEDERATION FINANCIAL INSTITUTIONS LLC	ATLANTA	GA
FIDELITY BOND AND MORTGAGE CO	BLUE BELL	PA
FIDELITY NATIONAL FUNDING CORP	RAPID CITY	SD
FINANCE FACTORS LTD	HONOLULU	HI
FINANCIAL NETWORK SERVICES	VAN NUYS	CA
FINANCIAL SERVICES MTG CORP	IRVINE	CA
FIRST BANK	MCKINNEY	TX
FIRST BANK ARKANSAS	JONESBORO	AR
FIRST CAPITAL FINANCIAL CORP	REDONDO BEACH	CA
FIRST CITIZENS BANK	BILLINGS	MT
FIRST COMMERCIAL BANK NA	LITTLE ROCK	AR
FIRST COMMERCIAL BANK NA MEMPHIS	MEMPHIS	TN

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
FIRST EQUITY RESIDENTIAL MORTGAGE INC	CHELSEA	MI
FIRST FEDERAL SAVINGS ALA	LYNCHBURG	VA
FIRST FEDERAL SAVINGS AND LOAN	WOOSTER	OH
FIRST FEDERAL SAVINGS BANK	NEW CASTLE	PA
FIRST GOVERNMENT MORTGAGE AND INVEST COR	LANDOVER	MD
FIRST HOME SAVINGS BANK SLA	PENNSVILLE	NJ
FIRST MANHATTAN FUNDING INC	WESTCHESTER	CA
FIRST MORTGAGE CORPORATION	WACO	TX
FIRST NATIONAL BANK	TEMPLE	TX
FIRST NATIONAL BANK	CONWAY	AR
FIRST NATIONAL BANK	LITTLE FALLS	MN
FIRST NATIONAL BANK	WARSAW	IN
FIRST NATIONAL BANK	PIERRE	SD
FIRST NATIONAL BANK	BREWSTER	MN
FIRST NATIONAL BANK	BERRYVILLE	AR
FIRST NATIONAL BANK	MONTICELLO	MN
FIRST NATIONAL BANK	WORLAND	WY
FIRST NATIONAL BANK EVERGREEN PARK	EVERGREEN PARK	IL
FIRST NATIONAL BANK FOX VALLEY	NEENAH	WI
FIRST NATIONAL BANK OF MICHIGAN	EAST LANSING	MI
FIRST NATIONAL BANK OF ST PETER	SAINT PETER	MN
FIRST NATIONAL BANK ROCHESTER	ROCHESTER	NY
FIRST NATIONAL BK CENTRAL ILL	SPRINGFIELD	IL
FIRST NATIONAL MORTGAGE CORP	MIAMISBURG	OH
FIRST NEW YORK MORTGAGE CORP	NEW YORK	NY
FIRST PATRIOT MORTGAGE INC	REVERE	MA
FIRST POTOMAC MORTGAGE CORP	FAIRFAX	VA
FIRST REPUBLIC MORTGAGE CORP	SANTA ANA	CA
FIRST SAVINGS AND LOAN ASSN ND	ABERDEEN	SD
FIRST SECURITY MORTGAGE CORP	COLUMBIA	SC
FIRST STATE BANK	LEOTI	KS
FIRST STATE BANK OF SO CA	PARAMOUNT	CA
FIRST STATE BANK SAUK CENTRE	SAUK CENTRE	MN
FIRST TEACHERS FEDERAL CU	SCHENECTADY	NY
FIRST TEXAS MORTGAGE COMPANY	SAN ANTONIO	TX
FIRST VOLUNTEER BANK	UNION CITY	TN
FIVE STAR FINANCIAL SERVICES	SCHAUMBURG	IL
FLAGSHIP FEDERAL SAVINGS BANK	SAN DIEGO	CA
FLEET MORTGAGE–FLEET MTG CORP	MILWAUKEE	WI
FORT WAYNE NATIONAL BANK	FORT WAYNE	IN
FRANCES SLOCUM BANK	WABASH	IN
FTF MORTGAGE CORP	IRVINE	CA
FUNDERS MORTGAGE CORP AMERICA	COVINA	CA
GAMS INC	SUTTER CREEK	CA
GATEWAY RESIDENTIAL GROUP LLC	DES PERES	MO
GENTRY CAPITAL MORTGAGE CORPORATION	PINE BUSH	NY
GEORGIA UNION MORTGAGE CO LP	MACON	GA
GESCO SERVICES LLC	LUBBOCK	TX
GLEN ROCK SAVINGS BANK SLA	GLEN ROCK	NJ
GMAC MORTGAGE GROUP INC	HORSHAM	PA
GOLD COAST FUNDING GROUP INC	DAVIE	FL
GOLD KEY MOPRTGAGE CORPORATION	NASHVILLE	TN
GOLDEN BAY CAPITAL CORPORATION	OAKLAND	CA
GOLDSTAR GROUP INC	BETHESDA	MD
GOMEMX MARKETING GROUP INC	POMONA	CA
GRAND NATIONAL BANK	WAUCONDA	IL
GRANTS STATE BANK	GRANTS	NM
GREAT LAKES FUNDING INC	EDINA	MN
GREAT WESTERN BANK	IRVINE	CA
GREATER FUNDING OF NY INC	CANANDAIGUA	NY
GRIFFIN FEDERAL SAVINGS ALA	GRIFFIN	GA
GSL SAVINGS BANK	GUTTENBERG	NJ
GULF FINANCIAL SERVICES INC	BLAIRSVILLE	GA
H AND R BLOCK MORTGAGE CO LLC	KANSAS CITY	MO
H AND R MORTGAGE INC	BAKERSFIELD	CA
HALLMARK GOVERNMENT MORTGAGE	BELLEVUE	WA
HAMMOND MORTGAGE INC	CUMMING	GA
HAMPSTEAD FINANCIAL CORPORATION	FORT LEE	NJ
HAVERHILL COOPERATIVE BANK	HAVERHILL	MA
HEARTLAND COMMUNITY BANK FSB	MONTICELLO	AR
HEARTLAND MORTGAGE INC	TUCSON	AZ
HIGHLAND FEDERAL S L ASSOC	CROSSVILLE	TN

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
HILL COUNTRY BANK	AUSTIN	TX
HOLMGREN AND ASSOCIATES	OAKLAND	CA
HOME AMERICA FINANCIAL SERVICES INC	INDIANAPOLIS	IN
HOME BANK	GUNTERSVILLE	AL
HOME LOANS INC	MIAMI	FL
HOME MORTGAGE FIN SRVS CORP	MIAMI	FL
HOMEOWNERS FINANCIAL SERVICES	NORCROSS	GA
HOMEOWNERS MORTGAGE WHOLESALERS INCORP	MARIETTA	GA
HOMEOWNERS MTG AND EQUITY INC	AUSTIN	TX
HORIZON FEDERAL SAVINGS BANK	OSKALOOSA	IA
HOWARD WEIL MORTGAGE CORP	NEW ORLEANS	LA
HUB MORTGAGE SERVICE INC	MARYSVILLE	CA
HUDSON ADVISORS LLC	DALLAS	TX
HUNTINGTON NATIONAL BANK	COLUMBUS	OH
HYDE PARK BANK AND TRUST CO	CHICAGO	IL
IBJ SCHRODER BANK AND TR CO	NEW YORK	NY
ICI FUNDING CORPORATION	SANTA ANA HEIGHTS	CA
IFS DIRECT INCORPORATED	DENVER	CO
IMAGE MORTGAGE INC	TEMECULA	CA
INDEPENDENT BANK	FT LUPTON	CO
INDUSTRIAL BANK	VAN NUYS	CA
INFINITY FINANCIAL SERVICES INC	PROVO	UT
INTEGRATED FISCAL SERVICES INC	WILTON MANORS	FL
INTER–BORO SAVINGS AND LOAN	CHERRY HILL	NJ
INTERAMERICAN FINAN SER INC	MIAMI	FL
IPSWICH CO–OPERATIVE BANK	IPSWICH	MA
J B CORKLAND MORTGAGE CO	KNOXVILLE	TN
JACOBS BANK	SCOTTSBORO	AL
JEFFERSON MORTGAGE GROUP LTD	OAKTON	VA
JEFFERSON NATIONAL BANK	CHARLOTTESVILLE	VA
JEFFERSON SAVINGS BANK	WEST JEFFERSON	OH
JMJ FINANCIAL GROUP	GARDEN GROVE	CA
JOHNSON–ANDERSON MORTGAGE CO	DENVER	CO
JSM FINANCIAL INCORPORATED	FOLSOM	CA
JVS FINANCIAL GROUP INC	WOODRIDGE	IL
JW RIKER NORTHERN RI INC	WARWICK	RI
KANSAS HOME MTG JUNCT CITY INC	JUNCTION CITY	KS
KEMBA COLUMBUS CREDIT UNION	COLUMBUS	OH
KILGORE FIRST NATIONAL BANK	KILGORE	TX
KITSAP FEDERAL CREDIT UNION	SILVERDALE	WA
KLEBERG FIRST NAT MTG CO INC	KINGSVILLE	TX
KZ MORTGAGE LLC	PUYALLUP	WA
LA BANK NA	SCRANTON	PA
LAD FINANCIAL	SAN DIEGO	CA
LAFAYETTE AMERICAN BANK AND TRUST CO	BRIDGEPORT	CT
LEBANON VALLEY NATIONAL BANK	LEBANON	PA
LENDERS ASSOCIATES CORP	MARIETTA	GA
LEOMINSTER CREDIT UNION	LEOMINSTER	MA
LEXINGTON SAVINGS BANK	LEXINGTON	MA
LIBERTY MORTGAGE SERVICES INC DELAWARE	MORRIS PLAINS	NJ
LOAN COMPANY	ASHEVILLE	NC
LOAN SOURCE CORPORATION	WESTLAKE VILLAGE	CA
LOUISIANA CENTRAL BANK	FERRIDAY	LA
LYON COUNTY STATE BANK	EMPORIA	KS
M JAMES AND CO	YARMOUTH	ME
MADISON COUNTY BANK	MADISON	NE
MAGELLAN MORTGAGE LLC	SALEM	OR
MAGNUM CAPITAL GROUP INC	MONARCH BEACH	CA
MAHONING NATIONAL BANK	YOUNGSTOWN	OH
MAIN AMERICA CAPITOL LC	ATLANTA	GA
MARGARET M BROWN INC	RIVERDALE	GA
MARYLAND BANK AND TRUST COMPANY NA	WALDORF	MD
MASTERS FUNDING GROUP INC	RIVERSIDE	CA
MAXIMA FINANCIAL GROUP	TAMPE	AZ
MAYFLOWER COOPERATIVE BANK	MIDDLEBORO	MA
MBI MORTGAG NINETEEN SIXTY INC	HOUSTON	TX
MCNAIR FINANCIAL GROUP INC	INDIANAPOLIS	IN
MEDICAL AREA FEDERAL CREDIT UNION	BOSTON	MA
MEMBERS FIRST FEDERAL CREDIT UNION	MECHANICSBURG	PA
MERCANTILE BANK W CENTRAL MO	SEDALIA	MO
MERCHANTS AND FARMERS BANK	WEST HELENA	AR
MERCHANTS BANK OF CALIFORNIA NA	LAGUNA HILLS	CA

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
METRO FINANCIAL INC	LAS VEGAS	NV
METROPOLITAN FINANCIAL INC	ORANGE	CA
METROPOLITAN LIFE INS CO	NEW YORK	NY
MEZA GOLD MORTGAGE CORPORATION	RANCHO CUCAMONGA	CA
MICAL MORTGAGE INC	SAN DIEGO	CA
MID AMERICA BANK SOUTH	MANKATO	MN
MID AMERICA MORTGAGE SERVICES	LEAWOOD	KS
MID EAST FINANCIAL SERVICES	NEW YORK	NY
MID FLORIDA FUNDING LTD	LONGWOOD	FL
MIDAMERICA BANK	MAPLEWOOD	MN
MIDDLE TENNESSEE BANK	COLUMBIA	TN
MIDLAND DATA SYSTEMS INC	KANSAS CITY	MO
MIDWEST AMERICA FINANCIAL CORPORATION	CHICAGO	IL
MIDWEST AMERICA MORTGAGE CORPORATION	BROOKLYN PARK	MN
MIDWEST LOAN SERVICES INC	HOUGHTON	MI
MILLENNIUM FUNDING CORP	NORWELL	MA
MINNESOTA'S CREDIT UNION	EAGAN	MN
MINNWEST BANK DAWSON	DAWSON	MN
MISSION NATIONAL BANK	SAN FRANCISCO	CA
MONEYLINE FINANCIAL SERVICE INC	ST LOUIS	MO
MORRIS SMITH FEYH	COLUMBUS	OH
MORTGAGE ACCEPTANCE CORP	CLOSTER	NJ
MORTGAGE ALTERNATIVES INC	SALT LAKE CITY	UT
MORTGAGE ASSOCIATES INC	DIAMOND BAR	CA
MORTGAGE CENTER	WEST SPRINGFIELD	MA
MORTGAGE CENTER CORP	MILLBRAE	CA
MORTGAGE CONSULTANTS INC	SMYRNA	GA
MORTGAGE FINANCIAL SERVICES INC	DALLAS	TX
MORTGAGE MART INC	BLUE BELL	PA
MORTGAGE MATTERS INC	INDIANAPOLIS	IN
MORTGAGE NETWORK INC	SALT LAKE CITY	UT
MORTGAGE NOW INC	SOUTHFIELD	MI
MORTGAGE PLANNING CORPORATION	DENVER	CO
MORTGAGE PROS CORP	MIAMI	FL
MORTGAGE RESOURCES INC	PHOENIX	AZ
MORTGAGE SERVICE CENTER INC	CAMP SPRINGS	MD
MORTGAGE SERVICE CENTER OF S FLORIDA INC	TAMARAC	FL
MORTGAGE STORE	WILLOWBROOK	IL
MUNICIPAL CREDIT UNION	NEW YORK	NY
MURAL COMPANY LLC	PHOENIX	AZ
MUTUAL SAVINGS AND LOAN ASSN	METAIRIE	LA
MUTUAL SAVINGS ASSN	LEAVENWORTH	KS
NATIONAL BANK OF DAINGERFIELD	DAINAGERFIELD	TX
NATIONAL CITY BANK MINNEAPOLIS	MINNEAPOLIS	MN
NATIONAL CITY BANK OF PENNSYLVANIA	PITTSBURGH	PA
NATIONAL HOME FUNDING CORPORATION	CALABASAS	CA
NETWORK LENDERS OF AMERICA INC	LITTLE NECK	NY
NEVADA FEDERAL FINANCIAL CORP	LAS VEGAS	NV
NEXUS FINANCIAL LLC	OAKLAND	NJ
NOREAST MORTGAGE CORPORATION	ONTARIO	CA
NORTH FORK FINANCIAL INC	NEWPORT BEACH	CA
NORTH PACIFIC BANK	TACOMA	WA
NORTHAMERICAN EQUITY CORP	FORT WAYNE	IN
NORTHEAST BANK	MINNEAPOLIS	MN
NORTHERN FINANCIAL MORTGAGE CO	CHAGRIN FALLS	OH
NORTHERN MORTGAGE AND INVESTMENT LTD	FLAGSTAFF	AZ
NORTHWEST LENDING ASSOCIATES	BELLEVUE	WA
NORTHWEST NATIONAL BANK	VANCOUVER	WA
NOVA MORTGAGE CORPORATION	ROCKVILLE	MD
NUNEZ FINANCE CO	MIAMI	FL
OAKWOOD ACCEPTANCE CORPORATION	GREENSBORO	NC
OCALA NATIONAL BANK	OCALA	FL
OCEANMARK FINANCIAL CORP	HOLLYWOOD	FL
OMNI BANK	PONTOON BEACH	IL
ON-SITE MORTGAGE SERVICE	CARMEL	IN
ONE VALLEY BANK—CLARKSBURG	CLARKSBURG	WV
ONE VALLEY BANK OF RONCEVERTE	RONCEVERTE	WV
OZAUKEE BANK	CEDARBURG	WI
PACIFIC EMPIRE FUNDING	LAKE FOREST	CA
PACIFIC NORTHWEST FUNDING GROUP	PALM SPRINGS	CA
PADUCAH BANK AND TRUST COMPANY	PADUCAH	KY
PAINE WEBBER REAL EST SEC INC	NEW YORK	NY

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
PALM BEACH FINANCIAL NETWORK INC	JUPITER	FL
PALMYRA STATE BANK	WEST QUINCY	MO
PAN-AMERICAN LIFE INS CO	NEW ORLEANS	LA
PAWLING SAVINGS BANK	FISHKILL	NY
PENNIES TO MILLIONS INC	UPLAND	CA
PEOPLES BANK	SANDY HOOK	KY
PEOPLES MORTGAGE CORPORATION	UNION	NJ
PERPETUAL SAVINGS BANK FSB	CEDAR RAPIDS	IA
PFG INC	ENCINO	CA
PFI BANCORP INC	INDIANAPOLIS	IN
PHOENIX HOME LENDING INC	TEMPE	AZ
PHOENIX HOME MORTGAGE CORP	ROCKVILLE	MD
PINNACLE FUNDING GROUP	FT MYERS	FL
PIONEER BANK CHATTANOOGA	CHATTANOOGA	TN
PIONEER BANK FSB	CHATTANOOGA	TN
PIONEER CITIZENS BANK	RENO	NV
PIONEER FEDERAL SAVINGS BANK	WINCHESTER	KY
PIONEER SAVINGS AND LOAN ASSOC FSLA	IRVINE	CA
PLATINUM MORTGAGE	ROSEVILLE	MN
PLATTSMOUTH STATE BANK	PLATTSMOUTH	NE
PNC BANK KENTUCKY INC	LOUISVILLE	KY
PNC BANK OHIO NA	CINCINNATI	OH
POINSETT BANK FSB	GREENVILLE	SC
POLICE AND FIRE FEDERAL CU	PHILADELPHIA	PA
POLLARI WRIGHT INC	SAN JOSE	CA
POST OAK FINANCIAL LLC	HOUSTON	TX
PREFERRED EQUITY MORTGAGE CORP	INDIANAPOLIS	IN
PREMIER BANK	JEFFERSON CITY	MO
PRESERV FINANCIAL INC	DENVER	CO
PRESIDENTIAL MTG AND FINAN INC	ORANGE	CA
PRESTIGE MORTGAGE INC	SAN ANTONIO	TX
PRESTIGE MORTGAGE LLC	SOUTHINGTON	CT
PRIME BANK OF CENTRAL FLORIDA	TITUSVILLE	FL
PRIME FINANCIAL NETWORK INC	LA JOLLA	CA
PRIME MORTGAGE INVESTORS	CORAL GABLES	FL
PRIMERCHANT CAPITAL CORPORATION	SHERMAN OAKS	CA
PROVIDENT MUT LIFE INS PHIL	BERWYN	PA
QMD INC	DENVER	CO
R AND J MORTGAGE SERVICE INC	LEDGEWOOD	NJ
R E I INC	ORANGE	CA
RANCHO MORTGAGE CORPORATION	UPLAND	CA
REDLANDS FEDERAL SAVINGS AND LOAN ASSN	REDLANDS	CA
REHABILITATION LOAN CORP	KANSAS CITY	MO
RELOCATION MORTGAGE SERVICE INC	PLYMOUTH	MN
REPUBLIC SECURITY BANK FSB	WEST PALM BEACH	FL
RESIDENTIAL FINANCIAL SRVS INC	HOLLYWOOD	FL
RESIDENTIAL MORTGAGE BANKING	HAUPPAUGE	NY
RESIDENTIAL MORTGAGE LLC	OGDEN	UT
RICHLAND MORTGAGE INC	FORT WORTH	TX
RICK BAILEY MORTGAGE UNLIMITED INC	ARCATA	CA
RIO GRANDE MORTGAGE CORP	ALBUQUERQUE	NM
RIVER VALLEY MORTGAGE INC	ROSEVILLE	MN
RIVERTON STATE BANK	RIVERTON	WY
RMST MORTGAGE INC	NORTH PROVIDENCE	RI
ROCKINGHAM HERITAGE BANK	HARRISONBURG	VA
ROKLOUD FUNDING INC	SARASOTA	FL
ROSLYN SAVINGS BANK	ROSLYN	NY
ROTHSCHILD FINANCIAL GROUP	OCALA	FL
ROYAL MORTGAGE INC	HUNTINGTON WOODS	MI
SAFE RITE CAPITAL CORP	SOLVANG	CA
SANDWICH COOPERATIVE BANK	SANDWICH	MA
SANDY SPRING NATIONAL BANK—MD	SILVER SPRING	MD
SANTIAM MORTGAGE MORTGAGE CORP	LEBANON	OR
SASCO INC	ENCINO	CA
SEABOARD EMPLOYEES CREDIT UNION	JAACKSONVILLE	FL
SECURED LENDERS MORTGAGE	MERCED	CA
SECURITY BANK AND TRUST CO	LAWTON	OK
SECURITY BANK HARRISON	HARRISON	AR
SECURITY MTG AND INVESTMENT CO	INWOOD	WV
SECURITY STATE BANK	ABILENE	TX
SECURITY TRUST AND SAVINGS BANK	SHENANDOAH	IA
SENIOR LOAN CENTER INC	CARMICHAEL	CA

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
SENTINEL MORTGAGE LLC	TUCSON	AZ
SERVE CORPS MORTGAGE INC	NAPERVILLE	IL
SHARON CREDIT UNION	SHARON	MA
SHELTER MORTGAGE SERVICES INC	CHERRY HILL	NJ
SHOPTAW JAMES INC	ATLANTA	GA
SHORE BANK	ONLEY	VA
SHORE BANK AND TRUST	CLEVELAND	OH
SHORELINE FUNDING	LONG BEACH	CA
SILSBEE STATE BANK	SILSBEE	TX
SOUTH CAROLINA FEDERAL SAVINGS BANK	COLUMBIA	SC
SOUTHCOAST FINANCIAL GROUP	NORTH DARTMOUTH	MA
SOUTHERN FINANCIAL MORTGAGE CORP	CUMMING	GA
SOUTHERN HERITAGE MORTGAGE	ATLANTA	GA
SOUTHERN STATES FUNDING	WINTER PARK	FL
SOUTHLAND MORTGAGE FINANCING CORP	FORT WALTON BEACH	FL
SOUTHSIDE BANK	TAPPAHANNOCK	VA
SOUTHWEST FEDERAL SAVINGS AND LOAN ASSN	CHICAGO	IL
SPOKANE RAILWAY CREDIT UNION	SPOKANE	WA
STALLION CAPITAL INC	RANCHO CUCAMONGA	CA
STATE BANK LA CROSSE	LA CROSSE	WI
STATE SAVINGS BANK	DUBLIN	OH
STATE STREET BANK AND TRUST COMPANY NA	NEW YORK	NY
STATE TEACHERS RT BOARD OHIO	COLUMBUS	OH
STOCKMENS NATIONAL BANK	RUSHVILLE	NE
STUART–WRIGHT MTG FUNDING COR	MURRAY	UT
SUBURBAN FEDERAL SAVINGS FSB	HARVEY	IL
SUMMIT BANK	AKRON	OH
SUMMIT FUNDING INC	LAS VEGAS	NV
SUMMIT SAVINGS FSB	ROHNERT PARK	CA
SUN CITY BANK	SUN CITY	AZ
SUN FEDERAL FINANCIAL CORP	MIAMI	FL
SUN PACIFIC FUNDING INC	SANTA ANA	CA
SUN WORLD NA	EL PASO	TX
SUNTRUST BANK SOUTH CENTRAL TN	LAWRENCEBURG	TN
SUNTRUST BANK TALLAHASSEE NA	TALLAHASSEE	FL
SUNTRUST FINANCIAL CORP	HOLLYWOOD	FL
SUNWEST BANK OF FARMINGTON	FARMINGTON	NM
SUPERIOR MORTGAGE SERVICES INC	LANHAM	MD
SUTTER MORTGAGE CORPORATION	WALNUT CREEK	CA
TAG FUNDING CORP	WOODLAND HILLS	CA
TENNESSEE BANK AND TRUST	MEMPHIS	TN
TEXAS CAPITAL MORTGAGE	HOUSTON	TX
THE–HOMETOWN BANK	CLYDE	NC
THIRD FEDERAL SAVINGS BANK	NEWTOWN	PA
TINTON FALLS STATE BANK	TINTON FALLS	NJ
TOM WOOD MORTGAGE INC	INDIANAPOLIS	IN
TOWER FINANCIAL SERVICES LLC	PASADENA	MD
TOWNE CENTER PROPERTIES INCORPORATED	CERRITOS	CA
TOWNE SQUARE MORTGAGE	SAN DIEGO	CA
TOYOTA MOTORS FEDERAL CR UN	TORRANCE	CA
TRANS-MUTUAL MORTGAGE BANKERS	CORAL GABLES	FL
TRANSFINANCIAL BANK	BOWLING GREEN	KY
TRENTON SAVINGS BANK	LAWERENCEVILLE	NJ
TRI COUNTY STATE BANK	CHAMBERLAIN	SD
TRI STAR AMERICA MORTGAGE CORP	TOLEDO	OH
TRI-STAR FUNDING CORPORATION	DALLAS	TX
TRINIDAD MORTGAGE	TRINIDAD	CO
TURNER MORTGAGE CORP	MIAMI LAKES	FL
TWENTIETH CENTURY FOX FCU	LOS ANGELES	CA
U S MORTGAGE CONSULTANTS INC	LAS VEGAS	NV
UBS MORTGAGE FINANCE INC	NEW YORK	NY
UNICOR MORTGAGE INC	BATON ROUGE	LA
UNIFED MORTGAGE CORP	SAN DIEGO	CA
UNIFIRST FEDERAL SAVINGS BANK	HOLLYWOOD	FL
UNION BANK OF MENA	MENA	AR
UNION PLANTERS BANK LAKEWAY AREA	KNOXVILLE	TN
UNITED BANK AND TRUST CO	VERSAILLES	KY
UNITED BANK OF–PHILADELPHIA	PHILADELPHIA	PA
UNITED CENTRAL BANK	GARLAND	TX
UNITED HOME LENDING SERVICES INC	CHARLESTON	WV
UNITED LENDING COMPANIES INC	RAMSEY	NJ
UNITED MORTGAGE INC	TULSA	OK

TITLE II.—MORTGAGEES WITHDRAWN—Continued

Mortgagee name	City	State
UNITED SECURITY SAVINGS BANK	MARION	IA
UNITED SOUTHERN MORTGAGE CORP ROANOKE	VIRGINIA BEACH	VA
US CREDIT CORP	AURORA	CO
US MORTGAGE INC	LITTLE ROCK	AR
US NEW MEXICO FEDERAL CU	ALBUQUERQUE	NM
USB MORTGAGE COMPANY INC	SPOKANE	WA
VICTORIA STATE BANK	VICTORIA	MN
VICTORY BANK AND TRUST COMPANY	CORDOVA	TN
VIKING MORTGAGE SERVICES INC	PORT ORCHARD	WA
VILLA PARK TRUST AND SAVINGS BANK	VILLA PARK	IL
VILLAGE BANK AND TRUST CO	RIDGEFIELD	CT
VINTAGE BANK	NAPA	CA
W LYMAN CASE AND CO	COLUMBUS	OH
WEALTHWISE INVESTMENT CORP	MILPITAS	CA
WEST ALLIS SAVINGS BANK SA	WEST ALLIS	WI
WESTERN CAPITAL FUNDING INC	WILDOMAR	CA
WESTERN MORTGAGE EXPRESS	EL CENTRO	CA
WESTMONT MORTGAGE SERVICES INC	DENVER	CO
WHITE OAK MORTGAGE	TEXARKANA	TX
WILSHIRE FUNDING CORPORATION	PORTLAND	OR

Dated: January 4, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman,Mortgagee Review Board.

[FR Doc. 00–2893 Filed 2–10–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Announcement of Proposed Change to All Endangered Species Act Section 10(a)(1)(A) Permits Issued for the Quino Checkerspot Butterfly (*Euphydryas editha quino*)

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: The Fish and Wildlife Service (Service) proposes to modify all scientific research permits issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for the Quino checkerspot butterfly to authorize the following activities: survey by pursuit; capture; handle; release; and with prior approval from the Service, purposefully kill for the collection of voucher specimens.

DATES: Written comments on this proposed action must be received on or before March 13, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief'Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Jennifer O'Brion, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243.

SUPPLEMENTARY INFORMATION:

Background

Currently all permits issued pursuant to section 10(a)(1)(A) of the Act to conduct presence or absence surveys for the Quino checkerspot butterfly only authorize permittees to pursue the butterfly when conducting surveys, and no capture or handling of individuals is allowed. The Service would like to amend permits to authorize permittees to capture and handle individuals in order to confirm identification and either release individuals at the capture site or potentially kill them for voucher specimens with prior approval from the Service. This amendment will ensure that any changes made to the management of the Quino checkerspot butterfly are based on confirmed new locations.

Dated: February 4, 2000.

Cynthia U. Barry,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–3065 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of a Permit To Incidentally Take Threatened and Endangered Species in Association With a Habitat Conservation Plan for the Metro Air Park Project in the Natomas Basin, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the Fish and Wildlife Service (Service), are considering approval of a Habitat Conservation Plan (Plan) and issuance of an Endangered Species Act Incidental Take Permit under section 10(a)(1)(B) of the Endangered Species Act to the Metro Air Park Property Owners Association (Association), a non-profit mutual benefit corporation representing 138 individual property owners. The permit would authorize incidental take of listed species and unlisted species that may be listed in the future. Incidental taking of listed species could occur as a result of development of the Metro Air Park industrial park project and from rice farming activities.

Pursuant to the National Environmental Policy Act, the Service intends to prepare an Environmental Impact Statement addressing our proposed action of approving the Plan and issuance of an incidental take permit. The Plan covers an area of 1,892 acres within the Metro Air Park Planning Area in the Natomas Basin, Sacramento County, California. The

Plan addresses the federally threatened giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and 10 currently unlisted species and their habitats. The Plan creates a process for the issuance of permits under the Federal Endangered Species Act, and the California Endangered Species Act.

This notice describes the proposed action and possible alternatives, invites public participation in the scoping process for preparing the Environmental Impact Statement, solicits written comments, and identifies the Service's official to whom questions and comments concerning the proposed action and the Environmental Impact Statement may be directed.

DATES: Written comments are encouraged and should be received on or before March 13, 2000.

ADDRESSES: Information, comments, or questions related to preparation of the Environmental Impact Statement and the National Environmental Policy Act process should be submitted to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may also be sent by facsimile to telephone (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Lori Rinek, Fish and Wildlife Biologist, or Vicki Campbell, Division Chief, at the Sacramento Fish and Wildlife Office, telephone (916) 414–6600. Persons wishing to obtain background material should contact Victoria Harris, Thomas Reid and Associates, 560 Waverley Street, Suite 201, P.O. Box 880, Palo Alto, California 94301, telephone (650) 327–0429.

SUPPLEMENTARY INFORMATION

Availability of Documents

Documents will also be available for public inspection by appointment during normal business hours (7:30 a.m. to 4:30 p.m., Monday through Friday) at the Sacramento Fish and Wildlife Office address provided above.

Background

Listed wildlife species are protected against ''take'' pursuant to section 9 of the Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22 and 17.32.

In accordance with the requirements for obtaining an incidental take permit, the Association has developed a Plan. The goals of the Plan are to conserve listed and unlisted species and their habitat while accommodating otherwise lawful land uses.

The Plan study area comprises 1,892 acres within the Natomas Basin in Sacramento County, California. Agriculture is the dominant land use in the Natomas Basin and on the Metro Air Park site. The predominant crops are rice, corn, sugar beets, grain, tomatoes, and pasture. Natural and uncultivated vegetation types are interspersed throughout the agricultural areas of the Natomas Basin. Natural areas are found primarily along irrigation canals, drainage ditches, pasture, and uncultivated fields. The borders of drainage canals are often associated with narrow strips of emergent vegetation and/or wooded riparian areas.

Portions of the Natomas Basin that are within the jurisdiction of the City of Sacramento are included in the Natomas Basin Habitat Conservation Plan which was completed by the City of Sacramento in November, 1997. The Metro Air Park project is described in the Natomas Basin Habitat Conservation Plan, but because the Metro Air Park project is outside the City limits, the project cannot be covered by the City's incidental take permit. Therefore, the Association is seeking a separate incidental take permit for the Metro Air Park project. Take could occur as a result of urban development of the Metro Air Park industrial park project and from rice farming activities.

Under the Plan, the Association proposes to minimize and mitigate the effects of urban development by participating in the basin-wide conservation program set up for the entire Natomas Basin which is described in the Natomas Basin Habitat Conservation Plan. The focus of this basin-wide conservation program is on the preservation and enhancement of ecological communities that support species associated with wetland and upland habitats. Through the payment of development fees, one-half acre of mitigation land would be established for every acre of land developed within the Plan area. The mitigation land would be acquired and managed by the Natomas Basin Conservancy, a non-profit conservation organization established to implement the Natomas Basin Habitat Conservation Plan. Mitigation fee amounts and the mitigation strategy for the Plan would be subject to the same adjustments required under the Natomas Basin Habitat Conservation Plan. The Plan also includes take avoidance and minimization measures that include the requirement for landowners to conduct pre-construction species surveys and to carry out minimization measures prior to site development.

Although the consultant for the applicant, Thomas Reid and Associates, will prepare the draft Environmental Impact Statement, the Service will be responsible for its content and scope.

The Environmental Impact Statement will consider the proposed action (issuance of a section 10(a)(1)(B) Endangered Species Act permit to the Association) and a reasonable range of alternatives. Potential alternatives may include different entities as the permittee (e.g., the County or individual land owners), and a No Action alternative. If the County were the permittee, then the Association and landowners would delay development of the Metro Air Park project until the County obtained a section 10(a)(1)(B) permit for areas under its jurisdiction in the Natomas Basin. If each individual land owner were the permittee then separate incidental take permits would need to be processed. The No Action alternative would involve the Service not issuing a section 10(a)(1)(B) permit.

Environmental review of the Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement.

Comments and participation in the scoping process are solicited. The Natomas Basin Habitat Conservation Plan, upon which the Metro Air Park project is based, was subject to extensive public review through the City of Sacramento's California Environmental Quality Act process (Initial Study and Negative Declaration, 6/97), and the Federal review process (National Environmental Policy Act Environmental Assessment, December 1997). All of the issues associated with this project have been thoroughly addressed under the California Environmental Quality Act compliance process. The Service's Environmental

Impact Statement will be examining the same issues that have been dealt with under the California Environmental Quality Act as well as any others that may arise.

The primary purpose of the scoping process is to identify rather than to debate the significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives addressed in the draft Environmental Impact Statement.

Dated: February 7, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office.

[FR Doc. 00–3181 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Changes in the Internal Processing of Federal Acknowledgment Petitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA) is changing certain internal procedures for processing petitions for federal acknowledgment as an Indian tribe, and clarifying other procedures. These revised procedures do not change the acknowledgment regulations, 25 CFR Part 83.

DATES: These changes are effective as of February 11, 2000. They are to apply to all future proposed findings, except for Little Shell of Montana petitioner, and to all future final determinations, except for the Cowlitz petitioner, where technical reports have been prepared already.

FOR FURTHER INFORMATION CONTACT: Acting Director, Duane Birdbear, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, MailStop 4660–MIB. (202) 208–3463.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is published in the exercise of authority under 5 U.S.C. 552(a); 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; and under the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.

To reduce the current delays in reviewing petitions for acknowledgment, the AS–IA is changing certain internal procedures for processing acknowledgment petitions, and clarifying other procedures. The current acknowledgment process has a substantial backlog resulting in delays of several years before review is begun of a petition that is ready for active consideration and before there is a final resolution of a petition on its merits. It is essential to change the internal processes so that acknowledgment decisions may be made in a more timely manner.

The acknowledgment process is based on the regulations in 25 CFR Part 83, first issued in 1978 and revised in 1994. No specific legislation established the acknowledgment process. An agency may change its procedures and implementation of its own regulations where these changes do not contradict or alter the regulations. These revised procedures do not change the acknowledgment regulations. Rather, these changes provide a different means of implementing the existing regulations. This **Federal Register** notice is to advise petitioners, interested parties, and the public of these changes. Petitioners and interested parties will be provided a copy of this notice of changes in procedures by first class mail.

After issuance of a proposed finding in Little Shell and a final determination in Cowlitz, the Branch of Acknowledgment and Research (BAR) will still have five active cases awaiting completion of a proposed finding. The BAR has not started the evaluation of four cases awaiting a final determination (two of which have been ready for more than two years), and three cases which are awaiting amended or second proposed findings. In addition, there are now 11 completed petitions awaiting active consideration which have not been reviewed. Six of these have been ready for review for more than three years. New letters of intent and documented petitions are continuing to be received in substantial numbers. There is no reason to believe that the number of requests for acknowledgment received by the Department will decline in the foreseeable future.

At the same time, there are other substantial demands on the time of the BIA's staff which will continue to reduce the proportion of their time available for evaluation of petitions. For example, petitioners and third parties frequently request an independent review of acknowledgment final determinations by the Interior Board of Indian Appeals (IBIA), requiring the BIA to prepare the record and responses to issues referred by the IBIA. In addition, the BIA is currently responding to litigation in at least five lawsuits concerning acknowledgment decisions. Finally, there are substantial numbers of Freedom of Information Act (FOIA) requests which require the BIA to copy the voluminous records of current and completed cases. There is no anticipated decrease in these types of required work in the foreseeable future.

In light of the backlog and other demands on the time of the BIA staff, it is necessary to make whatever procedural changes are possible within the framework of the existing regulations in order to resolve more expeditiously pending petitions for acknowledgment.

Changes in Procedures

Under the regulations, the petitioner has the burden to present evidence that it meets the mandatory criteria. Section 83.5(c) of the acknowledgment regulations, describing the duties of the Department, states that: ''the Department shall not be responsible for the actual research on the part of the petitioner.''

Section 83.10(a) of the regulations provides that the AS–IA may ''initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status.'' This language makes action on the part of the AS–IA discretionary and does not mandate that any additional research be carried out. In the past, under the authority of this section, substantial additional research often has been conducted by BIA staff to supplement a petitioner's research, especially where deficiencies remained even after extensive technical assistance had been provided to the petitioner. The present demands on BIA staff time and the backlog of cases mandate that this research no longer be done.

The AS–IA is therefore directing the BIA that, in conducting its review of petitions and third party comments, it is not expected or required to locate new data in any substantial way. Staff research is to be limited to that needed to verify and evaluate the materials presented by the petitioner and submitted by third parties. The BIA's review of a petition shall be limited to evaluating the arguments presented by the petitioner and third parties and to determining whether the evidence submitted by the petitioner, or by third parties, demonstrates that the petitioner meets each of the criteria. The BIA is expected to use its expertise and

knowledge of sources to evaluate the accuracy and reliability of the submissions. In cases where petitioners or third parties submit data that they have not analyzed, the BIA shall not itself conduct extensive analysis of these data to demonstrate that the criteria have or have not been met, but shall refer the responsibility for analysis to the petitioner or third parties to be completed during the comment period.

A proposed finding represents the agency's conclusions at the time that finding is made, based on the evidence in the record. One purpose of the comment period on the proposed finding is to give the petitioner and third parties an opportunity to present additional evidence in response to the deficiencies and weaknesses in the petition which were defined by the proposed finding. Submissions by the petitioner and third parties during the comment period, rather than BIA research, is the appropriate means to remedy such deficiencies.

Once the regulatory time frame for active consideration has begun on a proposed finding, the BIA will not consider additional materials submitted by petitioners or third parties. Any such materials received from the petitioner or third parties will be held for review during preparation of the final determination. The staff members evaluating the petition shall not request additional information from the petitioner and third parties during the preparation of the proposed finding. If necessary information and analysis are lacking, the petitioner or third parties may supply it in response to the proposed finding.

The review of a petition is to be conducted by a team of professional BIA researchers working in consultation with each other. The acknowledgment decision is not intended to be a definitive scholarly study of the petitioning group. The scope of the review shall be limited to that necessary to establish whether the petitioner has met its burden to establish by a reasonable likelihood of the validity of the facts that it meets all seven regulatory criteria. Although professional standards of BIA researchers will be applied to the review, these standards shall be applied within the constraints of time established by these procedures and the resources available, and as appropriate to the role of the Government in these procedures, which is to evaluate whether the petitioner has met its burden as defined in the regulations. In conducting its review and preparing its report and recommendation for the decision makers, it is not possible or reasonable to expect the BIA researchers to anticipate all possible court challenges. A court challenge is a reasonable expectation, and anticipating such challenges may require that extensive additional research or analysis be conducted beyond that necessary for the Department to reach a decision. Therefore, the AS—IA is directing the BIA to limit such research and analysis to that necessary for the decision.

The regulations (83.6(a)) state that a petition may be ''in any readable form that contains detailed, specific evidence . . .'' In some instances, materials submitted by the petitioner or a third party are poorly organized, do not identify the sources or even the nature of the documents provided, or cannot be identified with the source cited in the text submitted by the petitioner or third party. Where documents or exhibits are not, in whole or in part, in a ''readable form,'' BIA researchers shall no longer expend more than a reasonable amount of time attempting to identify the source or sources of documentary materials submitted without such information. Therefore, it is important for the petitioner and third parties to cite the source(s) for each document submitted in order for it to be given appropriate weight as evidence.

The acknowledgment regulations require that the AS–IA ''prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision'' (83.10(h)). In most instances in the past, one or more technical reports have been prepared in addition to the summary evaluation of the evidence under the criteria. A similar approach has been used for final determinations where there has been a substantial challenge to the proposed finding. The AS–IA is directing that, except for current cases where the technical reports have already been drafted, technical reports such as have been prepared in the past shall no longer be prepared to accompany the summary under the criteria.

Henceforth, the report on the proposed finding called for under the regulations, which is prepared for review by the decision makers, shall consist of a detailed summary evaluation of the arguments and evidence presented by the petitioner and any third parties. The summary evaluation report may be supplemented by a chart, or charts, listing the evidence under each criterion, describing how the evidence has been weighed, and indicating the sections of the regulations and the precedents from past decisions that have been applied to that evidence. The acknowledgment process will continue to apply the precedents established in past decisions, including precedents under 83.6(e). Indeed, the existence of a substantial body of established precedents now makes possible this more streamlined review process.

The AS–IA is directing that the departmental review of recommended decisions, including signature by the AS–IA, is to take no more than six weeks from the time the draft recommendation leaves the Branch of Acknowledgment and Research office and enters the surname process.

Advice to Petitioners

In view of these changes, petitioners are reminded that the petitioner has the burden to show it meets the criteria and the requirements established by the regulations. Under section 83.6(c), a petitioner ''must satisfy all of the criteria in paragraphs (a) through (g) of section 83.7 in order for tribal existence to be acknowledged. *Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria*'' (emphasis added). Section 83.6(a) states that the petition must contain ''detailed specific evidence in support of a request to the Secretary to acknowledge tribal existence.'' While section 83.6(a) also provides that the ''documented petition may be in any readable form,'' this does not relieve the petitioner of the burden of providing adequate evidence that it meets all seven mandatory criteria. Petitioners are reminded that a petition can and will be turned down for lack of evidence (83.6(d)).

The regulations at 83.5(b) provide that the guidelines for preparation of documented petitions may be updated as necessary. The changes the AS–IA is here making will require minor revisions of the guidelines. Until revised guidelines are issued, petitioners are advised by this notice that the policies and procedures in this memorandum supersede the existing guidelines where they may be in conflict.

Dated: February 7, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–3161 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mooretown Rancheria Alcoholic Beverage Control Law

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953 (Pub. L. 83–277), 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the United States Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983). This notice certifies that Ordinance No. 98–16, the Liquor Ordinance of the Concow Maidu Tribe of the Mooretown Rancheria, was duly adopted by the Mooretown Rancheria Tribal Council on July 30, 1998. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Mooretown Rancheria lands under the jurisdiction of the Mooretown Rancheria.

DATES: This ordinance is effective as of February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jim James, Branch of Judicial Services, Division of Tribal Government Services, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Mooretown Rancheria Ordinance No. 98–16 is to read as follows:

Liquor Ordinance of the Concow Maidu Tribe of the Mooretown Rancheria Ordinance 98–16

Chapter I—Introduction

Section 101. *Title.* This ordinance shall be known as the ''Liquor Ordinance of the Concow Maidu Tribe of the Mooretown Rancheria.''

Section 102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and the Constitution of the Concow Maidu Tribe of the Mooretown Rancheria (''Mooretown Rancheria'' or ''Rancheria'').

Section 103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Mooretown Rancheria. The enactment of a tribal ordinance governing liquor possession and sale on the Rancheria will increase the ability of the tribal government to control Rancheria liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Chapter II—Definitions

Section 201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 202. *Alcohol.* Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

Section 203. *Alcoholic Beverage.* Is synonymous with the term ''Liquor'' as defined in Section 207 of this Chapter.

Section 204. *Bar.* Means any establishment with special space and accommodations for sale by the glass, can or bottle and for consumption on the premises of liquor, as herein defined.

Section 205. *Beer.* Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as ''strong beer.''

Section 206. *General Lineal Membership.* Means the general lineal membership of the Mooretown Rancheria, which is composed of the voting membership of the Tribe as a whole.

Section 207. *Liquor.* Includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquor or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 208. *Liquor Store.* Means any store at which liquor is sold and, for the purposes of this ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

Section 209. *Malt Liquor.* Means beer, strong beer, ale stout, and porter.

Section 210. *Package.* Means any container or receptacle used for holding liquor.

Section 211. *Public Place.* Includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purposes of this ordinance, ''Public Place'' shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

Section 212. *Rancheria.* Means land held in trust by the United States Government for the benefit of the Concow Maidu Tribe of the Mooretown Rancheria (see also Section 216, Tribal Land).

Section 213. *Sale* and *Sell.* Include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

Section 214. *Spirits.* Means any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 215. *Tribal Council.* Means the Tribal Council of the Concow Maidu Tribe of the Mooretown Rancheria.

Section 216. *Tribal Land.* Means any land within the exterior boundaries of the Rancheria which is held in trust by the United States for the Tribe as a whole, including such land leased to other parties.

Section 217. *Tribe.* Means the Concow Maidu Tribe of the Mooretown Rancheria.

Section 218. *Wine.* Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with

wine spirits such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Section 219. *Trust Account.* Means the account designated by the Tribal Council for deposit of proceeds from the tax from the sale of alcoholic beverages.

Section 220. *Trust Agent.* Means the Tribal Chairperson or a designee of the Chairperson.

Chapter III—Powers of Enforcement

Section 301. *Powers.* The Tribal Council, in furtherance of this ordinance, shall have the following powers and duties:

(a) To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Rancheria;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Rancheria;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violation of this ordinance;

(g) To make such reports as may be required by the General Lineal Membership;

(h) To collect taxes and fees levied or set by the Tribal Council and to keep accurate records, books, and accounts; and

(i) To exercise such powers as are delegated by the General Lineal Membership.

Section 302. *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Tribal Council and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

Section 303. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council or its designee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this ordinance are being complied with.

Chapter IV—Sales of Liquor

Section 401. *Licenses Required.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Rancheria, except at a tribally licensed or tribally owned business operated on tribal land within the exterior boundaries of the Rancheria.

Section 402. *Sales Only on Tribal Land.* All liquor sales within the exterior boundaries of the Rancheria shall be on tribal land, including leases thereon.

Section 403. *Sales for Cash.* All liquor sales within the Rancheria boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards such as Visa, American Express, etc.

Section 404. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Rancheria is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Rancheria and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

Chapter V—Licensing

Section 501. *Application for Tribal Liquor License Requirements.* No tribal license shall issue under this ordinance except upon a sworn application filed with the Tribal Council containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of California.

(b) Satisfactory proof that the applicant is of good character and reputation among the people of the Rancheria and that the applicant is financially responsible.

(c) The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.

(d) Agreement by the applicant to accept and abide by all conditions of the tribal license.

(e) Payment of $250 fee as prescribed by the Tribal Council.

(f) Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

(g) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the Tribal Council and has been published at least twice in such local newspaper serving the community that may be affected by the license the Tribal Chairperson or Secretary may authorize. The notice shall state the date, time and place when the application shall be considered by the Tribal Council pursuant to Section 502 of this ordinance.

Section 502. *Hearing on Application for Tribal Liquor License.* All applications for a tribal liquor license shall be considered by the Tribal Council in open session at which the applicant, his attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Council shall determine whether to grant or deny the application based on:

(1) Whether the requirements of Section 501 have been met; and

(2) Whether the Tribal Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Tribal Council member, such members shall not vote on the application or participate in the hearings as a Tribal Council member.

Section 503. *Temporary Permits.* The Tribal Council or their designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed 3 days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 504 of this ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of $25 will be assessed on temporary permits.

Section 504. *Conditions of the Tribal License.* Any tribal license issued under this title shall be subject to such reasonable conditions as the Tribal Council shall fix, including, but not limited to the following:

(a) The license shall be for a term not to exceed 1 year.

(b) The licensee shall at all times maintain an orderly, clean and neat establishment, both inside and outside the licensed premises.

(c) The State of California shall have jurisdiction over offenses and civil causes of action committed on the licensed premises to the same extent that it has jurisdiction over offenses and civil causes of action committed elsewhere within California, and the California criminal laws, and civil laws of general applicability to private persons or private property, shall have

the same force and effect on the licensed premises as they have elsewhere in California.

(d) The licensed premises shall be subject to patrol by the tribal enforcement department, and such other law enforcement officials as may be authorized under federal, California, or tribal law.

(e) The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours.

(f) Subject to the provisions of subsection ''g'' of this section, no intoxicating beverages shall be sold, served, disposed of, delivered or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the tribal Council, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.

(g) No liquor shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Tribal Council.

(h) All acts and transactions under authority of the tribal liquor license shall be in conformity with the laws of the State of California, and shall be in accordance with this ordinance and any tribal license issued pursuant to this ordinance.

(i) No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

(j) There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

Section 505. *License Not a Property Right.* Notwithstanding any other provision of this ordinance, a tribal liquor license is a mere permit for a fixed duration of time. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Section 506. *Assignment or Transfer.* No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the Tribal Council expressed by formal resolution.

Chapter VI—Rules, Regulations, and Enforcement

Section 601. *Sales or Possession With Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this ordinance, or who shall operate or shall have liquor in his possession with intent to sell or distribute without a permit, shall be guilty of a violation of this ordinance.

Section 602. *Purchases From Other Than Licensed Facilities.* Any person within the boundaries of the Rancheria who buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.

Section 603. *Sales to Persons Under the Influence of Liquor.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this ordinance.

Section 604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

Section 607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

Section 608. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification, which falsely purports to show the individual to be over the age of 21 years, shall be guilty of violating this ordinance.

Section 609. *Violations of This Ordinance.* Any person guilty of a violation of this ordinance shall be liable to pay the Tribe a penalty not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the Tribal Council after 10 days notice to the licensee. The decision of the Tribal Council shall be final.

Section 610. *Acceptable Identification.* Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following issued cards of identification which shows his correct age and bears his signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor vehicles;

(2) United States Active Duty Military; and

(3) Passport.

Section 611. *Possession of Liquor Contrary to This Ordinance.* Alcoholic beverages which are possessed contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Tribal Council to enforce this section shall have the authority to, and shall seize, all contraband.

Section 612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of the ordinance by the Tribal Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Chapter VII—Taxes

Section 701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Rancheria in the amount of 1 percent of the amount actually collected, including payments by major credit cards. The tax imposed by this section shall apply to all retail sales of liquor on the Rancheria and shall preempt any tax imposed on such liquor sales by the State of California.

Section 702. *Payment of Taxes to Tribe.* All taxes from the sale of alcoholic beverages on the Rancheria

shall be paid over to the trust agent of the Tribe.

Section 703. *Taxes Due.* All taxes for the sale of alcoholic beverages on the Rancheria are due within 30 days at the end of the calendar quarter for which the taxes are due.

Section 704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Rancheria. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Tribal Council, such a review or audit is necessary to verify the accuracy of reports.

Chapter VIII—Profits

Section 801. *Disposition of Proceeds.* The gross proceeds collected by the Tribal Council from all licensing provided from the taxation of the sale of alcoholic beverages on the Rancheria shall be distributed as follows:

(a) For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

(b) The remainder shall be turned over to the Trust Account of the Tribe.

Chapter IX—Severability and Miscellaneous

Section 901. *Severability.* If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

Section 902. *Prior Enactments.* All prior enactments of the Tribal Council, which are inconsistent with the provisions of this ordinance, are hereby rescinded.

Section 903. *Conformance with California Laws.* All acts and transactions under this ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

Section 904. *Effective Date.* This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter X—Amendment

Section 1001. This ordinance may only be amended by a majority vote of the Tribal Council.

Chapter XI—Sovereign Immunity

Section 1101. Nothing contained in this ordinance is intended to, nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Dated: February 4, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–3221 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–01]

Marigold Mine Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Glamis Marigold Mining Company's Marigold Mine Expansion Project. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by April 10, 2000.

Public meetings to receive oral and written comments have been scheduled for the dates and places listed below. Meetings will begin at 7 p.m.

March 8, 2000, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada.

March 9, 2000 at the Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office, ATTN: Gerald Moritz, Project Manager, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, Nevada: Humboldt County Library, Winnemucca, Nevada: Lander County Library, Battle Mountain, Nevada: and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manager at the above Winnemucca Field Office address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the continued mining and expansion of the Red Rock and Top Zone pits, mining of two new pits (5–North and 8–North), new heap leach facility, heap leach pad expansion, new waste rock dumps, waste rock dump expansion, tailing impoundment and/or new tailing impoundment, miscellaneous ancillary facilities and exploration disturbance. The document analyzes three alternatives: the Proposed Action, the No Action, and the 8-South Partial Pit Backfill.

Dated: February 2, 2000.

Terry A. Reed,

Field Manager.

[FR Doc. 00–3270 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; SDM 87066]

Opening of Land in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of .25 acre of National Forest System land for the National Park Service for construction of temporary quarters for summer seasonal employees expires on March 19, 2000, after which the land will be open to surface entry and mining, subject to other segregations of record. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 19, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 63 FR 13687, March 20, 1998, which segregated the land described therein for up to 2 years from settlement, sale, location or entry under the general land laws, including

the mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System land or the mineral leasing laws. The 2-year segregation expires March 19, 2000. The withdrawal application will continue to be processed, unless it is canceled or denied. The land is described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,
Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

At 9 a.m. on October 19, 2000, the land will be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: January 27, 2000.

Howard A. Lemm,

Acting Deputy State Director, Division of Resources.

[FR Doc. 00–3267 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–HN; GP0–0105; OR–54394]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 66.24 acres of land to such forms of disposition as may by law be made of National Forest system lands, mining, mineral leasing, and geothermal leasing. The Forest Service exchange proposal has been withdrawn in its entirety.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Jenny Liang, BLMOregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208,503–952–6299.

SUPPLEMENTARY INFORMATION: Under the authority of the General Exchange Act of March 30, 1922, as amended; the Federal Land Policy and Management Act of 1976, and the Federal Land Exchange Facilitation Act of August 20, 1988, the following described Federal land identified in a proposed exchange between the Wallowa-Whitman National Forest and Bill Brown, Ceridwyn Trust, UAD, has been withdrawn in its entirety:

Willamette Meridian

T. 9 S., R. 36 E.,
Sec. 3,

Those portions of unpatented mining claims IBM 56, IBM 62, IBM 63, Midnight and Midnight Extension. Except any portion contained in unpatented mining claim IBM 61; and also excepting any portion contained in the following patented mining claims: Chebogan, Kitchi, Bald Mountain, Saginaw, Albine, Three Star, of MS 477, also La Cross and Pacific, of MS 813.

The area described contains 66.24 acres in Baker County, Oregon.

At 8:30 a.m., on March 20, 2000, the land will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on March 20, 2000, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on March 20, 2000, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on March 20, 2000, the land will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: February 2, 2000.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 00–3099 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9820–BK–ES02] [ES–50588, Group 183, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the subdivision of fractional section 13, and the reestablishment of a portion of the record meander line in Township 146 North, Range 27 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 7, 2000.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., March 7, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: January 21, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–3268 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9820–BK–ES02] [ES–50589, Group 184, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of the south boundary of section 18, Township 146 North, Range 26 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 7, 2000.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard,

Springfield, Virginia 22153, prior to 7:30 a.m., March 7, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: January 21, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–3269 Filed 2–10–00; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–428]

Certain Integrated Circuit Chipsets and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 6, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119. A supplemental complaint was filed on January 20, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuit chipsets and products containing same by reason of infringement of claims 1–3 and 15–16 of U.S. Letters Patent 5,333,276, claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, and 49 of U.S. Letters Patent 5,740,385, claims 1–12 and 28–48 of U.S. Letters Patent 5,581,782, and claims 1–31 of U.S. Letters Patent 5,548,733. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplemental complaint, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1999).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 4, 2000, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuit chipsets or products containing same by reason of infringement of claims 1–3 or 15–16 of U.S. Letters Patent 5,333,276, claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, or 49 of U.S. Letters Patent 5,740,385, claims 1–12 or 28–48 of U.S. Letters Patent 5,581,782, or claims 1–31 of U.S. Letters Patent 5,548,733, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

VIA Technologies, Inc., 8F, 533 Chung-Chen Road, Hsin-Tien, Taipei, Taiwan
VIA Technologies, Inc., 1045 Mission Court, Fremont, California 94539
First International Computer, Inc., 6F, Fermosa Plastics Rear Building, 201–24, Tun Hwa North Road, Taipei, Taiwan,First International Computer of America, Inc., 5070 Brandin Court, Fremont, California 94538
Everex Systems, Inc., 5020 Brandin Court, Fremont, California 94538

(c) Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–J, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–3243 Filed 2–10–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Request OMB emergency approval; application for benefits under the Family Unity Program.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by February 14, 2000. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503 before February 14, 2000. Comments regarding the emergency submission of this information collection may also be submitted via facimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until April 11, 2000. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Benefits Under the Family Unity Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–817. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This application provides for an automatic stay of deportation and employment authorization for the spouse or unmarried son or daughter of an alien who has been granted either temporary or permanent resident status pursuant to section 210 (SAW) or section 245a (Legalization) of the INA or section 202 of IRCA (Cuban/Haitian Adjustment).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 2 hours and 5 minutes (2.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 52,075 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 7, 2000.

Stephen R. Tarragon,

Acting Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–3154 Filed 2–10–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decision

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basis hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 27a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determinations decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

Connecticut
- CT99–01 (Mar. 12, 1999) (CT00–01)
- CT99–02 (Mar. 12, 1999) (CT00–02)
- CT99–03 (Mar. 12, 1999) (CT00–03)
- CT99–04 (Mar. 12, 1999) (CT00–04)
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General Wage Determination Publication

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Signed at Washington, DC, this 1st day of February 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–2506 Filed 2–10–00; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 3, 2000.

TIME AND DATE: 10 a.m., Thursday, February 10, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: This Commission meeting is a continuation of the Commission meeting held in closed session on January 27, 2000, to discuss the following:

1. *Pero* v. *Cyprus Plateau Mining Corp.,* Docket No. WEST 97–154–D (Issues include whether substantial evidence supports the judge's finding that the operator did not discriminate against Pero in violation of section 105(c).).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–3365 Filed 2–9–00; 1:15 pm]

BILLING CODE 67635–01–M

NUCLEAR REGULATORY COMMISSION

Docket No. 50–289

Amergen Energy Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC, (the licensee) to withdraw the October 19, 1998, application, as supplemented by letters dated February 16, and September 2, 1999, filed by GPU Nuclear Inc., (the then-licensee) for proposed amendment

to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pa.

The proposed amendment requested approval of a revised reactor coolant maximum allowable dose equivalent iodine 131 specific activity level of 1.0 microcuries/gram.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 18, 1998 (63 FR 64118). However, by letter dated December 29, 1999, the licensee withdrew the proposed change request.

For further details with respect to this action, see the application for amendment dated October 19, 1998, as supplemented February 16, and September 2, 1999, and the licensee's letter dated December 29, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of February 2000.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Sr. Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3190 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company (Quad Cities Nuclear Power Station,Units 1 and 2);

Exemption

I.

The Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. DPR–29 and DPR–30 which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of boiling water reactors (Units 1 and 2) located on the licensee's Quad Cities site in Rock Island County, Illinois. This exemption refers to both units.

II.

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFRPart 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of the proposed amendments to the technical specification (TS) P–T limits, the licensee requested in its submittal of November 12, 1999, that the staff exempt Quad Cities from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of 2, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits (excluding Code Cases N–588 and N–640) are based on the 1989 edition of the ASME Code.

Code Case N–588

The licensee has proposed an exemption to allow the use of ASME Code Case N–588 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine the P–T limits.

The proposed amendments to revise the P–T limits for Quad Cities rely, in part, on the requested exemption. These proposed P–T limits have been developed using the postulation of a circumferentially-oriented reference flaw as the limiting flaw in a RPV circumferential weld in lieu of an axially-oriented flaw required by the 1989 Edition of ASME Section XI, Appendix G.

Postulating the Appendix G [axially-oriented flaw] reference flaw in a circumferential weld is physically unrealistic and overly conservative, because the length of the flaw is 1.5 times the vessel thickness, which is much longer than the width of the reactor vessel girth weld. Industry experience with the repair of weld indications found during preservice inspection, and data taken from destructive examination of actual vessel welds, confirms that any remaining flaws are small, laminar in nature, and do not transverse the weld bead orientation. Therefore, any potential defects introduced during the fabrication process, and not detected during subsequent nondestructive examinations, would only be expected to be oriented in the direction of weld fabrication. For circumferential welds this indicates a postulated defect with a circumferential orientation.

An analysis provided to the ASME Code's Working Group on Operating Plant Criteria (WGOPC) (in which Code Case N–588 was developed) indicated that if an axial flaw is postulated on a circumferential weld, then based on the stress magnification factors (M_m) given in the Code Case for the inside diameter circumferential (0.443) and axial (0.926) flaw orientations, it is equivalent to applying a safety factor of 4.18 on the pressure loading under normal operating conditions. Appendix G requires a safety factor of 2 on the contribution of the pressure load in the case of an axially-oriented flaw in an axial weld, shell plate, or forging. By postulating a circumferentially-oriented flaw on a circumferential weld and

using the appropriate stress magnification factor, the margin of 2 is maintained for the contribution of the pressure load to the integrity calculation of the circumferential weld. Consequently, the staff determined that the postulation of an axially-oriented flaw on a circumferential RPV weld is a level of conservatism that is not required to establish P–T limits to protect the RCS pressure boundary from failure during hydrostatic testing, heatup, and cooldown.

The staff noted that ASME Code Case N–588 also includes changes to the methodology for determining the thermal stress intensity, K_{IT}, which was incorporated into Section XI of the ASME Code after the 1989 Edition. However, the licensee still used the methodology in the 1989 edition of the ASME Code to calculate K_{IT}. The staff already accepted the use of Code Case N–588 including the modifications made to the K_{IT} methodology for exemption requests by other licensees. Hence, the licensee may use the methodology in the 1989 Edition of ASME Section XI or the methodology contained in Code Case N–588 for determining K_{IT}.

In summary, the ASME Section XI, Appendix G, procedure was developed for axially-oriented flaws, which is physically unrealistic and overly conservative for postulating flaws of this orientation to exist in circumferential welds. Hence, the NRC staff concurs that relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–588 is acceptable and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

Code Case N–640 (Formerly Code Case N–626)

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine P–T limits.

The proposed amendments to revise the P–T limits for Quad Cities rely in part on the requested exemption. These revised P–T limits have been developed using the K_{Ic} fracture toughness curve, in lieu of the K_{Ia} fracture toughness curve, as the lower bound for fracture toughness.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than use of the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{Ia} curve since 1974 when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with ASME Section XI, Appendix G, continued operation of Quad Cities with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that the exemption would be required to approve the use of Code Cases N–588 and N–640. The staff examined the licensee's rationale to support the exemption requests and concurred that the use of the code cases would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G; appendix G of the Code; and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the code cases as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Cases N–588 and N–640 may be used to revise the P–T limits for Quad Cities Nuclear Power Station, Units 1 and 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Commonwealth Edison Company exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for Quad Cities Nuclear Power Station, Units 1 and 2.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (65 FR 5702). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of February 2000.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3187 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1—Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–51 for an Additional Twenty Year Period

The U.S. Nuclear Regulatory Commission has received an application from Entergy Operations, Inc., dated January 31, 2000, filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 54 for renewal of Facility Operating License No. DPR–51, which authorizes the applicant to operate Arkansas Nuclear One, Unit 1 (ANO–1). The current operating license for ANO–1 expires on May 20, 2014. ANO–1 is a pressurized-water reactor designed by Babcock and Wilcox and is located in Pope County, Arkansas. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

A copy of the application is available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C. 20037.

Dated at Rockville, Maryland, this the fourth day of February 2000.

For the Nuclear Regulatory Commission.

Christoper I. Grimes,

Chief, License Renewal and Standarization Branch, Division of Regulatory Improvement Programs.

[FR Doc. 00–3186 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML]

In the Matter of: Hydro Resources, Inc. P.O. Box 15910, Rio Rancho, NM 87174; Notice of Appointment of Adjudicatory Employees

COMMISSIONERS:

Richard A. Meserve, Chairman
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

Pursuant to 10 CFR 2.4, notice is hereby given that Messrs. William Von Till and John Lusher, Commission employees of the Office of Nuclear Material Safety and Safeguards, have been appointed as Commission adjudicatory employees within the meaning of section 2.4. Mr. Von Till will advise the Commission regarding issues related to the pending petition for review of LBP–99–30. Mr. Lusher will advise the Commission regarding issues related to the pending petition for review of LBP–99–19. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Messrs. Von Till and Lusher.

It is so ordered.

Dated at Rockville, Maryland, this 7th day of February, 2000.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–3191 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Company (Trojan Nuclear Plant); Exemption

I.

Portland General Electric Company (licensee) is the holder of Facility Operating License No. NPF–1, which authorizes the licensee to possess the Trojan Nuclear Plant (TNP). The license states, in part, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Columbia County, Oregon. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor.

II.

Section 50.54(p) of Title 10 of the Code of Federal Regulations states that ''The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan.''

Part 73 of Title 10 of the Code of Federal Regulations, ''PHYSICAL PROTECTION OF PLANT AND MATERIALS,'' states that ''This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used.'' Section 73.55 of Title 10 of the Code of Federal Regulations, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

By letter dated January 27, 1993, the licensee informed the NRC that they no longer intend to operate the Trojan facility and intend to remove all spent nuclear fuel from the 10 CFR part 50 licensed site. By letter dated January 29, 1998, the licensee requested an exemption from the security requirements of 10 CFR 50.54(p) and 10 CFR part 73. 10 CFR 50.54(p) and 10 CFR 73.55 provide security requirements to protect the spent fuel while within the boundary of a licensed power reactor site. The requested exemption from the security requirements for the Trojan Nuclear Plant would be effective after the spent fuel has been removed from the reactor site by the licensee and relocated to the new independent spent fuel storage installation (ISFSI), which is not physically associated with the reactor site. The new ISFSI has been licensed under 10 CFR Part 72 for storage facilities not associated with a reactor site and possesses an approved physical plan as required by 10 CFR 72.180 and 10 CFR 73.51.

Subpart H of 10 CFR Part 72 establishes requirements for physical protection for the independent storage of spent nuclear fuel and high-level radioactive waste and refers to 10 CFR 73.51 to define the requirements for physical protection of spent nuclear fuel stored under a specific license issued pursuant to 10 CFR part 72. The Trojan ISFSI has an NRC-approved security plan to protect the spent nuclear fuel stored there from radiological sabotage and diversion as required by 10 CFR part 72, subpart H.

Pursuant 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of these parts, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Additionally, 10 CFR 50.12 states that the Commission will not consider granting an exemption to 10 CFR part 50 unless special circumstances are present. Special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may grant exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property, and are otherwise in the public interest.

III.

The Commission has determined that the existing 10 CFR part 73 requirements need to be maintained at the Trojan Nuclear Plant until the spent fuel located in the spent fuel pool is physically relocated from the defueled site to the new security area at the ISFSI. With the completion of the spent fuel movement into the ISFSI, there will no longer be any special nuclear material located within the 10 CFR part 50 licensed site. At that time, the potential for radiological sabotage or diversion of special nuclear material at the 10 CFR part 50 licensed site would be eliminated. The security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 license site, presume that the purpose of the facility is to possess and utilize special nuclear material. Therefore, the continued application of the 10 CFR part 73 requirements to the Trojan facility would no longer be necessary to achieve the underlying purpose of the rule. Additionally, with the transfer of the special nuclear material to the ISFSI, the 10 CFR part 50 licensed site would be comparable to a source and byproduct licensee in terms of the level of security needed to protect the public health and safety. The continued application of 10 CFR part 73 security requirements would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities. Therefore, compliance with 10 CFR part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the removal of all special nuclear material from the 10 CFR part 50 licensed site constitutes special circumstances. The security of the special nuclear material will be maintained following relocation of the spent nuclear fuel to the 10 CFR part 72 licensed ISFSI since new assurance objectives and general performance requirements will be in place to protect the spent fuel by the security requirements in 10 CFR part 72. Therefore, protection of the special nuclear material will continue following relocation of the spent nuclear fuel from the 10 CFR part 50 licensed site.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the continued maintenance of appropriate security requirements for the special nuclear material. Additionally, special circumstances are present based on the relocation of the spent nuclear fuel from the 10 CFR part 50 site to the 10 CFR part 72 site. Therefore, the Commission hereby grants Portland General Electric Company an exemption from the requirements of 10 CFR 50.54(p) at the Trojan Nuclear Plant.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the maintenance of appropriate security requirements for the special nuclear material under the 10 CFR part 72 license. Therefore, the Commission hereby grants Portland General Electric Company an exemption from the requirements of 10 CFR part 73 at the Trojan Nuclear Plant.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant on the quality of the human environment (64 FR 46422).

This exemption is effective upon completion of the transfer of the spent nuclear fuel at the Trojan Nuclear Plant to the Trojan independent spent fuel storage installation.

Dated at Rockville, Maryland, this 2nd day of February 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–3189 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Risk-Informed Revisions to Technical Requirements of 10 CFR Part 50

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission has instructed its staff to explore changes to specific technical requirements of 10 CFR part 50, to incorporate risk-informed attributes. The staff is studying the ensemble of technical requirements contained in 10 CFR part 50 (and its associated implementing documents, such as regulatory guides and standard review plan sections) to (1) identify individual or sets of requirements potentially meriting change; (2) prioritize which of these requirements (or sets of requirements) should be changed; and (3) develop the technical bases to an extent that is sufficient to demonstrate the feasibility of changing the requirements. This work will result in recommendations to the Commission on specific regulatory changes that should be pursued. Public participation in the development of these recommendations will be obtained via workshops, information on a web site, and other means.

SUPPLEMENTARY INFORMATION: This notice serves as notification of a public workshop to provide for the exchange of information with all stakeholders regarding the staff's efforts to risk-inform the technical requirements of 10 CFR part 50. The subject of the workshop will be to discuss the preliminary work being performed by the NRC staff on risk-informing the technical requirements of 10 CFR part 50. The meeting will focus on the overall framework of the risk-informing process, the criteria used to identify and

prioritize candidate regulations and design basis accidents (DBAs), the results of the staff's initial efforts in risk-informing two trial implementation issues (i.e., 10 CFR 50.44 and special treatment rules), the preliminary results of the selection of additional candidate requirements and DBAs to be examined, and discussion of preliminary issues associated with the development and implementation of the entire process.

Initial documents covering some of the above topics will be available on the part 50 technical requirements web site between one and two weeks prior to the workshop and will be placed in the public document room. Each of these documents will contain a list of preliminary issues for discussion. The address for the Part 50 technical requirements web site is as follows: http://nrc-part50.sandia.gov This web site can also be accessed from the NRC web site (http://www.nrc.gov), by selecting ''Nuclear Reactors,'' and then ''Risk-Informed Part 50 (Option 3).''

The part 50 technical requirements web site currently contains some pertinent background information, located under the ''Related Sites'' page (e.g., SECY–98–300, SECY–99–256 and SECY–99–264).

Workshop Meeting Information

The staff intends to conduct a workshop to provide for an exchange of information related to the risk-informed revisions to the technical requirements of 10 CFR part 50. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

Date: February 24–25, 2000.

Agenda

Preliminary agenda is as follows (a final agenda will be available at the workshop):

Thursday, February 24, 2000 (8:00 a.m.–Noon)

NRC Presentations:
—Introduction (Background and Objectives)
—Framework for Risk-Informing Regulatory Requirements and DBAs
—Process and Criteria for Identifying and Prioritizing Candidate Regulations and DBAs
—Preliminary Results of Selection of Candidate Regulations and DBAs
—Trial Implementation of 10 CFR 50.44
—Trial Implementation of Special Treatment Requirements
—Future Activities

Thursday, February 24, 2000 (1:00 p.m.–5:00 p.m.)

Stakeholder Presentations
Open Discussion:
—Framework for Risk-Informing Regulatory Requirements and DBAs
—Process and Criteria for Identifying and Prioritizing Candidate Regulations and DBAs
—Preliminary Results of Selection of Candidate Regulations and DBAs
—Trial Implementation of 10 CFR 50.44
—Trial Implementation of Special Treatment Requirements

Friday, February 25, 2000 (8:00 a.m.–Noon)

Continued Discussion (as needed)
Future Activities
Wrap-Up/Summary

Location: NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852.

Registration: No registration fee for workshop; however, notification of attendance is requested so that adequate space, materials, etc., for the workshop can be arranged. Notification of attendance should be directed to Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

Dated this 7th day of February 2000.

For the Nuclear Regulatory Commission.

Mark A. Cunningham,

Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–3188 Filed 2–10–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Accounting for Social Insurance

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of Statement of Federal Financial Accounting Standards (SFFAS) No. 17, ''Accounting for Social Insurance.'' The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB).

ADDRESSES: Copies of SFFAS No. 17, ''Accounting for Social Insurance,'' may be obtained for $12.00 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00540–4.

FOR FURTHER INFORMATION CONTACT: James Short (telephone: 202–395–3124), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the seventeenth Statement of Federal Financial Accounting Standards (SFFAS), ''Accounting for Social Insurance.'' The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB) on November 19, 1999.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon accounting principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, a notice of document availability is published in the **Federal Register** and distributed throughout the Federal Government.

On September 30, the FASAB Principals signed a revised MOU agreeing that future FASAB statements will become final 90 days after FASAB has submitted a proposed standard to each of the three FASAB Principals, so long as no Principal objects during the 90-day period. OMB, GAO, and Treasury would continue to have veto power over any FASAB action and, in addition, they would maintain their statutory authority to establish and adopt accounting standards for the Federal Government.

Under this new agreement, FASAB will be responsible for the **Federal Register** notification process for future statements. Since this statement and one other were undergoing final review by September 30, they will be processed under the previous procedures. The other statement will be forwarded by OMB within the next few weeks for publication in the **Federal Register**.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of

the Treasury, and the Director of OMB decide upon accounting principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, a notice of document availability is published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/WH/EOP/omb, under the caption ''**Federal Register** Submissions.''

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–3174 Filed 2–10–00; 8:45 am]

BILLING CODE 3110–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27132]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

DATE: February 4, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by February 28, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarations(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a coy of any notice or order issued in the matter. After February 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9513)

Alliant Energy Corporation (''Alliant'' 222 West Washington Avenue, Madison, Wisconsin 53703, a registered holding company, and its wholly owned public utility subsidiary, IES Utilities, Inc. (''IES''), Alliant Tower, Cedar Rapid, Iowa 52401 (collectively, ''Applicants''), have filed a post-effective amendment under sections 9(a), 10 and 13(b) of the Act, and rules 54, 90 and 91 under the Act, to an application-declaration previously filed under the Act.

By order dated October 26, 1999 (Holding Co. Act Release No. 27096) (''Order''), the Commission authorized, among other things, Alliant to acquire indirectly a 25% membership interest in Nuclear Management Company, LLC (''NMC''). NMC was formed for the purpose of consolidating specialized nuclear power plant employees and resources of IES and certain other unaffiliated nuclear power plant owners(collectively, ''NMC Plant Owners'').[1]

IES was also authorized in the Order to enter into a service agreement (''Service Agreement'') and related employee lease agreement with NMC whereby IES would provide personnel and other resources to NMC, which would provide certain services (''Services'')[2] to the NMC Plant Owners, including IES, at cost. In addition, NMC was authorized to offer these Services to parties other than the NMC Plant Owners.

Applicants now seek authorization to enter into a new service agreement (''New Service Agreement'') whereby NMC would provide operations, maintenance, capital improvement and decommissioning services (''New Services'') to IES and to enter into essentially identical agreements with the other NMC Plant Owners. Applicants also note that NMC may admit additional members and/or offer similar types of operating services at competitive rates to third parties who are not, and whose affiliates are not, members of NMC.

Under the New Service Agreement, NMC will act as agent of IES and each of the other NMC Plant Owners in connection with the operation, management, maintenance, and repair of the nuclear plants owned by the NMC Plant Owners. The NMC Plant Owners will grant NMC, as their agent, the power and authority to execute, modify, amend or terminate any contracts, licenses, purchase orders, or permits relating to the operations of or capital improvements to a unit. In addition, NMC will make capital improvements to the NMC Plant Owner's nuclear plant facilities, and will perform decommissioning work required upon the retirement of such facilities.

In accordance with Nuclear Regulatory Commission (''NRC'') regulations, the NMC Plant Owners will transfer operating responsibility for the nuclear plants to NMC. Following the transfer of operating responsibility to NMC by NMC Plant Owners, NMC will be obligated to obtain and maintain all necessary licenses required by the NRC and other governmental bodies. Further, NMC, as supplier of operating services to each NMC Plant Owner, will have authority to make all decisions relating to the public health, safety, and security of the nuclear facilities. The New Service Agreement also provides that a NMC Plant Owner will transfer to NMC its on-site non-union employees and contractors responsible for the licensed obligations of its plant.

These rights and responsibilities notwithstanding, Applicants note that the NMC Plant Owners may have reserved certain rights under the New Service Agreement. For example, NMC may not, without the prior written approval of a NMC Plant Owner sell, encumber or otherwise dispose of any property or equipment which comprises any nuclear plant, except to the extent replaced by similar equipment or property of comparable value. In addition, the NMC Plant Owner has exclusive authority to direct NMC to retire a plant and commence decommissioning activity, to operate a plant at a reduced capacity, and to review and approve contracts that NMC may enter into with respect to acquisitions of equipment, property, materials and inventories. Further, each NMC Plant Owner will remain the owner of, and be entitled to all of, the capacity and energy associated with any plant it owns.

NMC will prepare an annual budget for operating expenses and capital improvements for each plant for the following year. NMC Plant Owners will reimburse NMC for operation costs[3] and capital improvements costs.

[1] Alliant indirectly owns undivided interest in two nuclear power facilities, the Kewaunee Nuclear Power Plant (''KNPP''), located in the Town of Carlton, Wisconsin, and the Duane Arnold Energy Center (''DAEC''), located in Palo, Iowa.

[2] The Services provided under the Service Agreement include fuel management, procurement and warehousing, licensing, outage support, quality assurance, records management, safety assessment and oversight, security, training and special projects.

[3] Costs of operation of a plant include salaries and employee benefits, the direct cost of contractors

Continued

Applicants state that the New Services will be provided to IES at cost, as determined in accordance with rules 90 and 91 and all cost of operation will be calculated and allocated in accordance with rules 90 and 91 of the Act.

Alliant Energy Corporation, et al. (70–9617)

Alliant Energy Corporation (''Alliant Energy''), a registered holding company, and its wholly owned non-utility subsidiary, Alliant Energy Resources, Inc. (''Resources'') each with principal executive offices at 222 West Washington Avenue, Madison, Wisconsin 53703, have filed an application under sections 9(a) and 10 of the Act and rule 54 of the Act.

Alliant Energy's public utility subsidiaries are Wisconsin Power & Light Company, South Beloit Water, Gas and Electric Company, Interstate Power Company, and IES Utilities Inc. Collectively, Alliant Energy's public utility subsidiaries provide public utility service to approximately 919,000 electric and 394,000 retail gas customers in parts of Wisconsin, Iowa, Minnesota and Illinois. Resources serves as the holding company for substantially all of Alliant Energy's energy related and non-utility investments and subsidiaries.

Resources is seeking authority to acquire, either directly or indirectly through a subsidiary, up to 6,666,666 shares out of a total of 25,000,000 shares of Series G Senior Preferred Stock, $0.001 par value per share (''Series G Preferred Stock'') of Capstone Turbine Corporation (''Capstone''), a privately held California corporation. Capstone designs, fabricates and markets an air-bearing based microturbine that is capable of using various fuels to generate electric power. Capstone's proprietary microturbine technology, referred to as the Capstone Micro Turbine ™ (''Micro Turbine''), is designed for use as an alternative power source in the multi-billion dollar worldwide market for distributed power generation. The Micro Turbine is intended for such applications as standby generation, peak load shaving, resources recovery and hybrid electric vehicles.

The aggregate purchase price ot be paid by Resources for the Series G Preferred Stock would be approximately $20 million, or $3.00 per share. In addition, Resources would be contractually bound by the terms of an amended and restated stockholders agreement (''Stockholders Agreement''). Under the terms of the Stockholders Agreement, Resources would be obligated to vote for directors designated by holders of Capstone's common stock and by holders of certain other series of preferred stock. The Stockholders Agreement terminates on the earlier of April 9, 2007 or upon an initial public offering of Capstone meeting certain standards set forth in the Capstone's Articles of Incorporation.

The Series G Preferred Stock and other preferred stock currently outstanding will automatically convert into common stock of Capstone, either on a vote of 75% of Capstone's preferred stockholders or following an initial public offering by Capstone having aggregate gross proceeds of at least $30 million and an initial offering price at least equal to $8.00 per share. The shares of common stock which would be received by Resources upon conversion would represent approximately six percent of the total number of ourstanding Capstone common stock shares.[4]

In conjunction with the proposed transaction, Resources and Capstone also intend to enter into a packaging and distribution agreement (''Distribution Agreement''). Under the Distribution Agreement, Capstone would appoint Resources as a distributor of Capstone products, including completed Micro Turbine assemblies, subassemblies and parts (including controls and software) which are used or will be used by customers in stationary electric power generation applications. Resources would have the right under the Distribution Agreement, directly or through subdistributors (which may be subsidiaries of Resources), to promote, market, sell, install, commission and service Capstone products on either an exclusive or non-exclusive basis. As a condition to its appointment as a distributor of Capstone products, Resources may also agree to purchase a specified number of completed Micro Turbine system assemblies for resale or lease. It is contemplated that Resources would remarket Capstone products to customers and/or package such products with other products and materials manufactured or acquired by Resources (or a subsidiary) for ultimate sale to customers.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3168 Filed 2–10–00; 8:45 am]

BILLING CODE 8010–01–M

engaged by NMC, all administrative and overhead costs and an allocable portion of the return on and of the investment by NMC in capital items owned by NMC.

[4] This estimate is based on the number of shares of common stock and preferred stock of Capstone outstanding on January 27, 2000, and assumes no further issuances of preferred stock (other than the currently approved 25 million shares of Preferred Stock to be issued) prior to the conversion date.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Lifekeepers International, Inc.; Order of Suspension of Trading

February 7, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lifekeepers International, Inc. (''Lifekeepers''), because of questions regarding the accuracy of statements of Lifekeepers and others concerning, among other things, Lifekeepers' financial condition, projected financial condition and the status of Lifekeeper's securities registration statements.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, February 8, 2000 through 11:59 p.m. EST, on February 22, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–3292 Filed 2–8–00; 4:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42390; File No. SR–MBSCC–99–8]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Electronic Pool Notification Service Rules

February 7, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''), notice is hereby given that on October 20, 1999, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

(''Commission'') and on November 8, 1999, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MBSCC's rules to clarify MBSCC's procedures when there is a disruption in the Electronic Pool Notification (''EPN'') service. The proposed rule change will also allow MBSCC members to terminate their EPN service by providing MBSCC with written notice ten days prior to termination instead of thirty days prior to termination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Article VIII, Rule 1, Section 3(d) of MBSCC's Rules requires EPN users to utilize the EPN service for all messages relating to EPN eligible securities except for messages that MBSCC specifically exempts in the EPN procedures and messages that both parties agree not to send through the EPN service. The proposed rule change makes explicit that in the event of an EPN system disruption and an extension of the cut-off times for communicating pool allocation information pursuant to The Bond Market Association Guidelines, EPN users will be relieved of their obligation to process messages through the EPN service until the beginning of the next business day after the EPN system has been recovered. This modification is intended to confirm an EPN's user's ability to revert to phone and fax communication of pool allocation information in the event of an EPN system disruption that results in a pool notification extension. EPN users will be relieved of their obligation to process messages through EPN until the beginning of the next business day after the EPN system has been recovered to give them flexibility in such situations. MBSCC believes, however, that if the EPN system recovers during a pool notification extension, EPN users will choose to utilize EPN rather than phone and fax communication to the extent possible.

The proposed rule change also changes Article VIII, Rule 2 of MBSCC's Rules, which currently provides that an EPN user may cease to maintain an EPN account or withdraw as an EPN user by giving MBSCC thirty days written notice prior to termination. The proposed rule change modifies this provision to require written notice ten days prior to termination. MBSCC believes that written notice ten days prior to termination is appropriate and is consistent with the notice of termination provision contained in MBSCC's rules governing its comparison and clearing services.

The proposed rule change also will:

- Delete references in the cover page and in Article VI, Rule 1 of MBSCC's Rules to the ''EPN Division'' because while EPN is a separate service from the comparison and clearing service, it is not a separately constituted division.
- Replace references in Article VI, Rule 1 of MBSCC's Rules to ''Federal National Mortgage Association'' with ''Fannie Mae'' to reflect the name change of such organization.
- Renumber the rules contained in Article IX that were inadvertently misnumbered and makes corresponding changes to cross-references to such rules and to the table of contents.
- Add Managing Director to Article X, Rules 1 and 3 as a person who may take certain actions with respect to certain actions taken by MBSCC.
- Renumber the EPN portion of MBSCC's Rules with consecutive page numbers throughout rather than page numbers by article for ease of reference.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–MBSCC–99–8 and should be submitted by March 3, 2000.

[2] The Commission has modified the text of the summaries prepared by MBSCC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3169 Filed 2–10–00; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) intent to promulgate a permanent amendment to implement the No Electronic Theft (NET) Act of 1997 after any temporary, emergency guideline amendment is promulgated to implement that Act; and (2) additional proposed permanent amendments to the sentencing guidelines, policy statements, and commentary. Request for comment. Notice of public hearing.

SUMMARY: (1) The Commission is considering making permanent any temporary, emergency guideline amendment that it may promulgate to implement the NET Act. The Commission is required to promulgate an emergency guideline amendment not later than April 6, 2000. It is the intent of the Commission subsequently to make that amendment a permanent amendment to the sentencing guidelines not later than May 1, 2000.

(2) The Commission also gives notice of the following: (A) proposed amendments to §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), 2A3.3 (Criminal Sexual Abuse of a Ward), 2A3.4 (Abusive Sexual Contact), 2G1.1 (Promoting Prostitution or Prohibited Sexual Contact), 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), and 2G3.1 (Importing, Mailing, or Transporting Obscene Matter) in order to implement the directives to the Commission contained in the Protection of Children from Sexual Predators Act of 1998, and issues for comment; (B) proposed amendments to § 2F1.1 (Fraud and Deceit) to implement the directives contained in the Wireless Fraud Protection Act, and issues for comment; (C) proposed amendments to §§ 1B1.1 (Application Instructions), 2K2.4 (Use of Firearms During or in Relation to Certain Crimes), and 4B1.2 (Definitions of Terms Used in Section 4B1.1) to respond to amendments to 18 U.S.C. 924(c) made by Public Law 105–386, and issues for comment; (D) issue for comment regarding whether, and in what manner the Commission should address five issues of circuit conflict; and (E) proposed technical and conforming amendments to various guidelines.

DATES: (1) Proposed Permanent NET Act Amendment.— Public comment supplementary to any public comment already received on the NET Act pursuant to the notice of proposed temporary amendment (see 64 FR 72,129, Dec. 23, 1999) should be received by the Commission not later than March 10, 2000; (2) Additional proposed permanent amendments and issues for comment.—Public comment should be received by the Commission not later than March 10, 2000; (3) Public hearing.—The Commission has scheduled a public hearing for March 23, 2000, at 9:30 a.m., at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002–8002. A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502–4590 not later than March 10, 2000. Written testimony for the hearing must be received by the Commission not later than March 16, 2000. Submission of written testimony is a requirement for testifying at the public hearing.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590. For further information concerning implementation of the NET Act, contact Kenneth Cohen, Director of Legislative Affairs: (202) 502–4523.

SUPPLEMENTARY INFORMATION: (1) Proposed Permanent NET Act Amendment.—The NET Act directs the Commission to: (A) ensure that the applicable guideline range for a crime committed against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime; and (B) ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed. The NET Act, as clarified by the Digital Theft Deterrence and Copyright Damages Improvement Act of 1998, requires the Commission to promulgate a temporary, emergency guideline amendment not later than April 6, 2000.

In December 1999, the Commission published three options for promulgating an emergency amendment to § 2B5.3 (Criminal Infringement of Copyright and Trademark) and accompanying commentary to implement the NET Act directive. See 64 FR 72,129, Dec. 23, 1999. The Commission has received, and is considering, public comment on those three options. The Commission intends to promulgate a temporary, emergency guideline amendment not later than April 6, 2000 (pursuant to the legislation), but not earlier than March 23, 2000 (the date of the public hearing).

An emergency guideline amendment must be re-promulgated as a permanent amendment or it becomes ineffective upon the expiration of the congressional review period of the Commission's next amendment report to Congress (180 days from the day the Commission submits the report to Congress). Accordingly, the Commission also intends to make permanent any temporary, emergency guideline amendment it promulgates to implement the NET Act.

Recognizing that some interested members of the public have already commented on the proposed temporary amendments, the Commission invites any other additional, supplementary comment regarding whether it should make any such amendment permanent. See 64 FR 72,129, Dec. 23, 1999.

(2) Additional Proposed Permanent Amendments.—The proposed amendments are presented in one of two formats. First, the amendments are proposed as specific revisions to the relevant guidelines and accompanying commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

(3) Public Hearing.—The scope of the hearing is expected to include: (A) the proposed amendment options to provide a temporary, emergency amendment to implement the NET Act previously published in the **Federal**

[3] 17 CFR 200.30–3(a)(12).

Register (64 FR 72129, Dec. 23, 1999); and (B) all permanent amendments that are proposed for action in this amendment cycle ending May 1, 2000 (including any emergency NET Act amendment that is proposed to be made permanent). For additional proposed amendments to the sentencing guidelines previously published by the Commission, see 64 FR 72129, Dec. 23, 1999; and 65 FR 2663, Jan. 18, 2000.

(4) Reports and other information pertaining to proposed amendments, including the proposed amendment to implement the NET Act, may be accessed through the Commission's website at *www.ussc.gov.*

Authority: 28 U.S.C. 994 (a), (o), (p); USSC Rules of Practice and Procedure 4.3, 4.4, and 4.5.

Diana E. Murphy,
Chair.

Proposed Permanent Amendment to Implement the Net Act

(1) *Synopsis of Proposed Amendment:* For further information about the Net Act and proposed amendment options to implement the NET Act, see 64 FR 72129 December 23, 1999.

Proposed Amendment: Protection of Children Against Sexual Predators Act

(2) *Synopsis of Proposed Amendment:* This proposed amendment responds to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105–314. The Act contained the following directives to the Commission:

(A) to provide a sentencing enhancement for offenses under Chapter 117 of title 18 (relating to the transportation of minors for illegal sexual activity) while ensuring that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines;

(B) to provide for appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity;

(C) to provide for appropriate enhancement if the defendant knowingly misrepresented his/her actual identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity;

(D) to provide for appropriate enhancement in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; and

(E) to clarify that the term ''distribution of pornography'' applies to the distribution of pornography for both monetary remuneration and a non-pecuniary interest.

The Act also required the Commission, in carrying out these directives, to ensure reasonable consistency with other guidelines, and avoid duplicative punishment under the guidelines for substantially the same offense. In addition, the Act contained two new crimes: (A) an offense, at 18 U.S.C. 2425, for the transmittal of identifying information about minors for criminal sexual purposes (which carries a 5-year statutory maximum term of imprisonment); and (B) an offense, at 18 U.S.C. 1470, for the transfer of obscene materials to minors (which carries a 10-year statutory maximum term of imprisonment).

This amendment presents options to address the new offense of transferring obscene materials to minors and to implement the directives to account for nonpecuniary distribution of child pornography and to provide enhancements for computer use and misrepresentation of identity. Issues for comment follow on how best to implement the directive to provide an enhancement for Chapter 117 offenses, to implement the directive to provide an enhancement for a pattern of activity of sexual abuse and exploitation, and to address the new offense of using interstate facilities to transmit identifying information about minors for criminal sexual purposes.

Part (A): The New Offense of Prohibiting Transfer of Obscene Materials to a Minor

Synopsis of Proposed Amendment: This amendment addresses the new offense at 18 U.S.C. 1470, which makes it unlawful to transfer obscene materials to a minor. The statutory maximum for the offense is 10 years imprisonment. The amendment proposes to reference the offense in the Statutory Index (Appendix A) to the guideline covering the importing, mailing, or transporting of obscene matter, § 2G3.1.

The amendment proposes to modify the distribution enhancement in § 2G3.1(b)(1) to define distribution of obscene matter to mean any act, including production, transportation, and possession with intent to distribute, related to (i) distribution for pecuniary gain (i.e., for profit); (ii) distribution for the receipt, or expectation of receipt, of anything of value, but not for pecuniary gain; and (iii) any knowing distribution to a minor. An additional 2-level enhancement is proposed if the offense involved the knowing transfer of obscene matter to a minor in order to entice that minor to engage in prohibited sexual conduct.

An issue for comment is presented regarding whether the distribution enhancement in § 2G3.1(b)(1) should include distribution between or among adults that does not involve the receipt, or expectation of receipt, of anything of value. An issue for comment is also presented regarding whether the current enhancement's reference to the loss table in the fraud guideline should be deleted. Currently, the distribution enhancement requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels.

Proposed Amendment:

Section 2G3.1 is amended in the title by adding at the end '', Transferring Obscene Matter to a Minor''.

Section 2G3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

''(1) (Apply the greatest.) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by [5] levels.

(C) Any distribution to a minor, increase by [5] levels. If the distribution to a minor was intended to persuade, induce, entice, coerce, or facilitate the transport of, the minor to engage in prohibited sexual conduct, increase by an additional [2] levels.''.

The Commentary to § 2G3.1 captioned ''Statutory Provisions'' is amended by inserting '', 1470'' after ''1466''.

The Commentary to § 2G3.1 captioned ''Application Note'' is amended by striking Application Note 1 in its entirety and inserting the following:

''1. For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to distribution of obscene matter.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who has not attained the age of [18] years.

'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense, including the production of child pornography, as defined in 18 U.S.C. 2256(8).''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 1468'' the following new line:

''18 U.S.C. 1470 2G3.1''

Issues for Comment: The Commission invites comment on whether it should include an enhancement in § 2G3.1(b)(1) for distribution of obscene matter that does not involve distribution for pecuniary gain, for anything of value, or to a minor. For example, should an enhancement be provided if an adult gives obscene matter to another adult and receives, or expects to receive, nothing in return? If so, what should be the extent of the enhancement?

The Commission invites comment regarding whether the reference in § 2G3.1(b)(1) to the loss table in the fraud guideline should be deleted. Currently, the enhancement for distribution at § 2G3.1(b)(1) requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels. Should the Commission maintain the minimum 5-level increase for distribution for pecuniary gain and provide an upward departure for especially large-scale commercial enterprises?

Part (B): The New Offense of Prohibiting Transmittal of Identifying Information about a Minor for Criminal Sexual Purposes

Issue for Comment: The Commission invites comment on whether and how it should amend the guidelines to cover the new offense, at 18 U.S.C. 2425, which prohibits the use of the mail or any facility or means of interstate commerce to knowingly transmit identifying information about a minor with the intent to entice, encourage, offer, or solicit anyone to engage in prohibited sexual activity. Should the Commission reference the new offense in the Statutory Index to the guideline covering the promotion of prohibited sexual conduct, § 2G1.1? Are there other guidelines to which the new offense might appropriately be referenced? In addition, is there aggravating and/or mitigating conduct that might be associated with the new offense, and if so, how should the guidelines take this conduct into account?

Part (C): Clarification of the Term ''Item'' in the Enhancement in § 2G2.4 for Possession of 10 or More Items of Child Pornography

Synopsis of Proposed Amendment: This amendment proposes to add commentary language to the guideline covering possession of child pornography, § 2G2.4, to clarify whether an individual computer file (as opposed to disk on which it and many other files may be located) is an ''item'' of child pornography for purposes of the enhancement in § 2G2.4(b)(2), which provides a 2-level increase if more than 10 items of child pornography are possessed. Four circuits have held that an individual computer file does qualify as an item for purposes of the enhancement. An issue for comment follows on how items should be quantified for purposes of the enhancement.

Proposed Amendment

The Commentary to § 2G2.4 is amended by adding at the end the following:

''Application Note:

1. A computer file containing a visual depiction involving the sexual exploitation of a minor shall be considered to be one item for purposes of subsection (b)(2). Accordingly, if a computer disk contains, for example, three separate files, each of which contains one or more such visual depictions, then those files would be counted as three items for purposes of that subsection.''.

Issue for Comment: The Commission invites comment on how items of child pornography should be quantified for purposes of the enhancement in § 2G2.4(b)(2), which provides a 2-level increase if more than 10 items of child pornography are possessed. Should, for example, a book or computer file containing 300 visual depictions of child pornography be counted as one item, or as three items, or as some other number of items?

Part (D): The Directive to Clarify That ''Distribution of Pornography'' Applies to the Distribution of Pornography for Both Monetary Remuneration and a Non-Pecuniary Interest

Synopsis of Proposed Amendment: This amendment addresses the Act's directive to clarify that the term ''distribution of pornography'' applies to the distribution of pornography for both pecuniary gain and any nonpecuniary interest. The amendment modifies the distribution enhancement in the pornography trafficking guideline, § 2G2.2(b)(2), to define distribution of child pornography to mean any act, including production, transportation, and possession with intent to distribute, related to (i) distribution for pecuniary gain (*i.e.,* for profit); (ii) distribution for the receipt, or expectation of receipt, of anything of value, but not for pecuniary gain; and (iii) any knowing distribution to a minor. An additional 2-level enhancement is proposed if the offense involved the knowing transfer of child pornography to a minor in order to entice that minor to engage in prohibited sexual conduct.

An issue for comment is presented regarding whether the distribution enhancement in § 2G2.2(b)(2) should include distribution between or among adults that does not involve the receipt, or expectation of receipt, of anything of value. An issue for comment is also presented regarding whether to delete the current enhancement's reference to the loss table in the fraud guideline, whether to maintain the minimum 5-level increase for distribution for pecuniary gain, and whether to provide for an upward departure for especially large-scale commercial enterprises. Currently, the enhancement for distribution at § 2G2.2(b)(2) requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels.

Proposed Amendment

Section 2G2.2(b) is amended by striking subdivision (2) in its entirety and inserting the following:

''(2) (Apply the greatest.) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by [5] levels.

(C) Any distribution to a minor, increase by [5] levels. If the distribution to a minor was intended to persuade, induce, entice, coerce, or facilitate the transport of, the minor to engage in prohibited sexual conduct, increase by an additional [2] levels.''.

The Commentary to § 2G2.2 is amended in Application Note 1 by striking '' 'Distribution' includes'' and

all that follows through ''intent to distribute.'' and inserting the following:

'' 'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to distribution of material involving the sexual exploitation of a minor.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who has not attained the age of [18] years.

'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense, including the production of child pornography, as defined in 18 U.S.C. § 2256(8).''.

Issues for Comment: The Commission invites comment on whether it should include an enhancement in § 2G2.2(b)(2) for distribution of child pornographic material that does not involve distribution for pecuniary gain, for anything of value, or to a minor. For example, should an enhancement be provided if an adult gives child pornographic material to another adult and receives, or expects to receive, nothing in return? If so, what should be the extent of the enhancement?

The Commission also invites comment regarding whether the reference in § 2G2.2(b)(2) to the loss table in the fraud guideline should be deleted. Currently, the enhancement for distribution at § 2G2.2(b)(2) requires the court to increase the overall offense level by the number of offense levels from the fraud loss table corresponding to the retail value of the material involved in the offense, but in any event not less than 5 levels.

Part (E): The Directives To Provide an Enhancement for the Use of a Computer or the Misrepresentation of the Defendant's Identity

Synopsis of Proposed Amendment: This amendment responds to the Act's directives to: (i) provide for appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity; and (ii) provide for appropriate enhancement if the defendant knowingly misrepresented his/her actual identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual conduct.

The amendment proposes to implement these directives by providing a [2]-level enhancement in the sexual abuse guidelines, §§ 2A3.1–2A3.4, and the prostitution and promotion of prohibited sexual conduct guideline, § 2G1.1, for either the use of a computer, or other means, to contact the minor electronically or the misrepresentation of a criminal participant's identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual conduct. The amendment also contains an option, shown in brackets, to delete the language in the proposed enhancement requiring the motive to ''persuade, induce, entice, coerce, or facilitate the transport of, the minor to engage in prohibited sexual activity''.

Although the proposed enhancement combines these two factors as alternative triggers for the enhancement, the Commission could choose to provide separate, cumulative enhancements for these two types of offense conduct.

An issue for comment follows regarding whether the Commission should add an enhancement to the child pornography production and trafficking guidelines for misrepresentation of the defendant's identity or the identity of any other participant in the criminal conduct.

Proposed Amendment

Section 2A3.1(b) is amended by adding at the end the following subdivision:

''(6) If [, to persuade, induce, entice, coerce, or facilitate the transport of, a minor to engage in prohibited sexual conduct,] the offense involved: (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following:

'' 'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense, including the production of child pornography, as defined in 18 U.S.C. § 2256(8).''.

Section 2A3.2(b) is amended by striking ''Characteristic'' and inserting ''Characteristics'; and by adding at the end the following subdivision:

''(2) If[, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved: (A) the use of a computer, or other means, to communicate with the minor electronically, or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by redesignating Notes 1 through 4 as Notes 2 through 5, respectively; and by inserting before Note 2, as redesignated by this Amendment, the following new Note 1:

''1. For purposes of this guideline—

'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse).''.

Section 2A3.3 is amended by inserting after subsection (a) the following subsection:

''(b) Specific Offense Characteristic

(1) If[, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved: (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.''.

The Commentary to § 2A3.3 captioned ''Application Notes'' is amended by striking Note 1 in its entirety and inserting the following:

''1. For purposes of this guideline—

'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the

Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in § 2A3.1 (Criminal Sexual Abuse).

'Ward' means a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.''.

Section 2A3.4(b) is amended by adding at the end the following subdivision:

''(4) If[, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended by redesignating Notes 1 through 5 as Notes 2 through 6, respectively, and inserting before Note 2, as redesignated by this amendment the following as the new Note 1:

''1. For purposes of this guideline—

'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse).''.

Section 2G1.1(b) is amended by adding at the end the following subdivision:

''(4) If [, to persuade, induce, entice, coerce, or facilitate the transport of, a child to engage in prohibited sexual conduct,] the offense involved (A) the use of a computer, or other means, to communicate with the minor electronically; or (B) the knowing misrepresentation of a participant's identity, increase by [2] levels.''.

The Commentary to § 2G1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after ''For purposes of this guideline—'' the following:

'' 'Minor' means an individual who has not attained the age of [18] years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse).''.

Issue for Comment: The Commission invites comment regarding whether the enhancement for use of a computer in subsection (b)(3) of the child pornography production guideline, § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material), should be modified to cover, in addition to the use of a computer, the misrepresentation of a criminal participant's identity to solicit a minor's participation in sexually explicit conduct to produce sexually explicit material. In addition, the Commission invites comment on whether the guideline covering trafficking child pornography, § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor) should also contain an enhancement for misrepresentation of a criminal participant's identity.

The Commission also invites comment regarding the appropriate scope of any enhancement for the use of a computer, or other means, to communicate electronically with a minor. Specifically, the Commission invites comment regarding whether the enhancement should incorporate the definitions of ''electronic communication'' and/or ''wire communication'' as those terms are defined in 18 U.S.C. 2510(12) and (1), respectively.

Parts (F) and (G): Issues for Comment on the Directives To Provide an Enhancement for Chapter 117 Offenses and for Sex Offenses Involving a Pattern of Activity

Due to the complexity of the issues involved in implementing the directives described in the following issues for comment, the Commission may not be able to complete all work necessary to promulgate amendments on these issues in this amendment cycle ending May 1, 2000. Recognizing the importance of responding to these directives as soon as possible but also acknowledging the possibility that the Commission may not promulgate amendments on these issues until the next amendment cycle, the Commission invites the public to comment on the following additional issues.

Part (F): Enhancement for Chapter 117 Offenses

Issues for Comment:

(1) The Protection of Children from Sexual Predators Act of 1998 directed the Commission to ''provide a sentencing enhancement for offenses under Chapter 117 of Title 18 (relating to the transportation of minors for illegal sexual activity) while ensuring that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines.'' The Commission invites comment on how to most appropriately implement this directive.

(2) Specifically, the Commission invites comment on whether, and to what extent, it should amend § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct) and the guidelines covering sexual abuse, §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), 2A3.3 (Criminal Sexual Abuse of a Ward), and 2A3.4 (Abusive Sexual Contact), to provide an enhancement if the offense involved the transportation, persuasion, inducement, enticement, or coercion of a child to engage in prohibited sexual conduct. Do enhancements proposed to be added for use of a computer, or other means, to communicate with the minor electronically and/or misrepresentation of a criminal participant's identity sufficiently provide an appropriate enhancement, or is an additional enhancement for other aggravating conduct needed?

(3) The Act also increased statutory penalties, from a maximum term of imprisonment of 10 years to a maximum term of imprisonment of 15 years, for offenses under 18 U.S.C. 2423(a), relating to the transportation of a minor with the intent to engage in illegal sexual activity, and § 2423(b), relating to travel with intent to engage in a sexual act with a juvenile. Convictions under 18 U.S.C. 2423(a) are currently referenced in the Statutory Index to § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct). Convictions under 18 U.S.C. 2423(b) are currently referenced in the Statutory Index to §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), and 2A3.3 (Criminal Sexual Abuse of a Ward). A concern raised by Congress and prosecutors is that sentences under § 2A3.2 do not necessarily reflect the seriousness of the conduct involved and the harm done to minor victims. Although that guideline was originally intended to cover defendants who engage in consensual sex with an underage partner, it is increasingly being used to cover offenses involving more serious conduct, such as those involving force, violent threats, or incapacitating intoxicants.

In light of these concerns and the increased statutory penalties, the Commission invites comment on whether it should amend the base offense level in § 2G1.1 and/or §§ 2A3.1, 2A3.2, 2A3.3, and/or 2A3.4, to provide for an increase of 2 or 4 levels and/or provide an enhancement of 2 or 4 levels

if the offense involved conduct punishable under 18 U.S.C. 2423. Many of the cases prosecuted under 18 U.S.C. 2423 are sentenced under § 2A3.2, either directly or as a result of a cross reference to that guideline in § 2G1.1. In addition, the Commission invites comment on whether it should amend the Statutory Index (Appendix A) to reference 18 U.S.C. 2423(a) and (b) offenses to § 2A3.4 (Abusive Sexual Contact) in addition to the other guidelines currently referenced for those offenses in the Statutory Index. Alternatively, should offenses for 18 U.S.C. 2423(a) and (b) both be referenced to § 2G1.1 (Promoting Prostitution and Prohibited Sexual Conduct)?

(4) The Commission invites comment on whether it should provide an enhancement in § 2A3.2 based on the intimidation or mental coercion of the minor victim by the defendant (or another criminally responsible participant) and/or for cases in which the minor victim's ability to truly consent was affected. The Commission also invites comment on whether it should add an enhancement of 2 or 4 levels or provide for an invited upward departure in § 2A3.2, if the defendant is more than 10 years older than the minor victim, or if the offense involved incest.

(5) The Commission also invites comment on whether it should reconsider the manner in which the guidelines currently cover offenses under Chapter 117 of Title 18 (relating to transportation of minors for illegal sexual activity). Specifically, should those offenses continue to be referenced in the Statutory Index to § 2G1.1 with cross references provided in that guideline for cases more appropriately sentenced under § 2G2.1, the guideline covering production of child pornography, § 2A3.1, the guideline covering criminal sexual abuse, or §§ 2A3.2–2A3.4, the guidelines covering any other prohibited sexual conduct? Should the commentary in § 2G1.1 be amended to clarify how to determine the offense level for cases involving persuasion, inducement, enticement, coercion, and/or transportation of a minor for prohibited sexual conduct that are unaccompanied by underlying prohibited sexual conduct, as well as for cases that are accompanied by such conduct?

Part (G): Sex Offenses Involving a Pattern of Activity

Issues for Comment:

The Protection of Children from Sexual Predators Act of 1998 directed the Commission to provide an enhancement in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. The Commission invites comment on how to most appropriately implement this directive. Specifically, the Commission invites comment on the following issues:

(1) Should the Commission implement the directive through an upward departure provision for a ''pattern of activity''? Specifically, should the Commission expand the kind of prior sexual offenses that would warrant application of the encouraged upward departure currently found in the guidelines covering sexual abuse, §§ 2A3.1 (Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)), 2A3.3 (Criminal Sexual Abuse of a Ward), and 2A3.4 (Abusive Sexual Contact)? The Commission could, for example, expand that definition to conform it to the statutory definition of ''prior sexual offense conviction'' found at 18 U.S.C. 2247. Currently, the upward departure provision permits consideration only of multiple acts that were prior convictions similar to the instant offense. Use of the statutory definition would allow consideration of prior convictions for offenses under Chapter 117 of Title 18 (relating to transportation for illegal sexual activity), Chapter 109A of that title (relating to sexual abuse), Chapter 110 of that title (relating to sexual exploitation of children), and under State law for offenses that would be punishable under those chapters if they had been within the Federal jurisdiction.

If the Commission were to expand the upward departure provision, should it include past conduct of the defendant that did not result in a conviction? Should the Commission include an expanded upward departure provision in § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct)?

(2) Should the Commission implement the directive by amending § 2G1.1, the guidelines covering sexual abuse, §§ 2A3.1–2A2.4, or any other guidelines, to provide an enhancement for ''pattern of activity'' similar to, or the same as, the 5-level ''pattern of activity'' enhancement currently found in § 2G2.2, the guideline covering trafficking in child pornography? If the Commission were to adopt such an approach, should the enhancement be the same as, or different from, the enhancement found in § 2G2.2? For example, should the ''pattern of activity'' enhancement include activity under chapter 117 of title 18 (relating to the transportation of minors for illegal sexual activity) in addition to conduct involving sexual abuse and sexual exploitation? What would be the appropriate extent of the enhancement?

(3) Should the Commission implement the directive by creating a new guideline in Chapter Four (Criminal History) for sexual offenders, similar to § 4B1.3 (Criminal Livelihood), which provides a minimum offense level for defendants who commit the offense as part of a pattern of criminal conduct engaged in as a livelihood? Creation of a guideline in Chapter Four would make the new provision applicable to all defendants sentenced under the guidelines, not just to defendants convicted of offenses relating to sexual abuse, sexual exploitation, or transportation for illegal sexual activity.

(4) Regardless of the approach adopted by the Commission (i.e., regardless of whether the Commission adopts an upward departure provision, an enhancement, or a provision in Chapter Four), should multiple acts of sexual misconduct that are considered for a ''pattern of activity'' relate to the offense of conviction and the relevant conduct involved in the offense? Should it include acts that formed the basis for prior convictions? Alternatively, should it include other conduct not directly related to the offense of conviction or to the relevant conduct involved in the offense, and should it include conduct that did not form the basis of a prior conviction?

(5) What types of conduct (e.g., rape, production of child pornography, enticing minors to engage in prohibited sexual conduct) should be covered by a ''pattern of activity'? Should trafficking in child pornography be covered in light of the revised statutory definition of ''prior sexual offense conviction'' found at 18 U.S.C. 2247?

(6) Should ''pattern of activity'' cover only certain types of offenders (e.g., pedophiles who are at a high risk of recidivism)? How should offenders who engage in incest be treated under the enhancement?

Proposed Amendment: Implementation of the Wireless Telephone Protection Act

(3) *Synopsis of Proposed Amendment:* In the Wireless Telephone Protection Act, Pub. L. 105–172, Congress directed the Commission to review and amend the sentencing guidelines, if appropriate, to provide an appropriate penalty for offenses involving the cloning of a wireless telephone (including offenses involving the attempt or conspiracy to clone a

wireless telephone). The Commission was instructed to consider eight specific factors: (A) the range of conduct covered by the offenses; (B) the existing sentences for the offense; (C) the extent to which the value of the loss caused by the offenses (as defined in the federal sentencing guidelines) is an adequate measure for establishing penalties under the federal sentencing guidelines; (D) the extent to which sentencing enhancements within the federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses; (E) the extent to which the federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties; (F) the extent to which federal sentencing guidelines for the offense(s) adequately achieve the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2); (G) the relationship of the federal sentencing guidelines for these offenses to offenses of comparable seriousness; and (H) any other factor the Commission considers to be appropriate.

This proposal presents two amendment options to implement the directive as well as issues for comment related to: (A) the use of a cloned wireless telephone in connection with other criminal activity, and (B) how to address the apparent disparate ways in which loss is determined in cloning offenses.

Option 1 provides an enhancement for possession of cloning equipment and for manufacturing and distributing cloned telephones. The amendment proposes a two-prong enhancement with a sentencing increase of [two] levels. The first prong tracks the relevant statute, 18 U.S.C. 1029(a)(9), by explicitly covering the use or possession of any ''cloning equipment,'' which is defined to include the hardware or software described in the statute. The definition also includes any mechanism or equipment that can be used to clone a wireless telephone. The definition additionally includes a scanning device [if the device was used with the intent to defraud]. The second prong specifically covers manufacture and distribution of a cloned telecommunications instrument. The definition of a cloned telephone also tracks the language of the statute.

Option 2 also proposes a two-prong enhancement with an increase of [two] levels and applies the enhancement to all access devices. The first prong covers possession or use of equipment that is used to manufacture access devices. (The ESN/MIN of a wireless telephone is a type of access device under the statute.) Specifically, this prong provides a [two] level enhancement if the offense involves the use or possession of any ''device-making equipment.'' It broadens the statutory definition of device-making equipment (found in 18 U.S.C. 1029(e)(6)) to include not only equipment that can be used to make an access device, but also the cloning hardware or software described in § 1029(a)(9). Consistent with the statute, the definition also includes a scanning device [if the device was used with the intent to defraud].

The second prong covers distribution of any counterfeit access device, as that term is defined in 18 U.S.C. 1029(e)(2), and includes the distribution of any cloned wireless telephone.

Proposed Amendment

Option 1

Section 2F1.1(b) is amended by redesignating subdivisions (4) through (7) as subdivisions (5) through (8), respectively; and by inserting after subdivision (3) the following new subdivision (4):

''(4) If the offense involved (A) the use or possession of any cloning equipment; or (B) the manufacture or distribution of a cloned telecommunications instrument, increase by [2] levels.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''21. For purposes of subsection (b)(4)—

'Cloning equipment' means any hardware, software, mechanism, or equipment that has been, or can be, configured to insert or modify any telecommunication identifying information associated with, or contained in, a telecommunications instrument so that such telecommunications instrument may be used to obtain telecommunications service without authorization. A scanning receiver is cloning equipment [if it was used or possessed with the intent to defraud]. 'Scanning receiver,' 'telecommunications service,' and 'telecommunication identifying information' have the meaning given those terms in 18 U.S.C. 1029(e)(8), (e)(9), and (e)(11), respectively.

'Cloned telecommunications instrument' means a telecommunications instrument that has been unlawfully modified, or into which telecommunications identifying information has been unlawfully inserted, to obtain telecommunications service without authorization.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''(b)(4)'' and inserting ''(b)(5)''; in Note 5 by striking ''(b)(4)'' and inserting ''(b)(5)''; and in Note 6 by striking ''(b)(4)'' and inserting ''(b)(5)''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Note 15 by striking ''(b)(5)'' each place it appears and inserting ''(b)(6)''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Notes 18 and 20 by striking ''(b)(7)'' and inserting ''(b)(8)''.

The Commentary to § 2F1.1 captioned ''Background'' is amended in the sixth paragraph by striking ''(b)(5)'' and inserting ''(b)(6)''; in the seventh paragraph by striking ''(b)(6)'' and inserting ''(b)(7)''; and in the eighth and ninth paragraphs by striking ''(b)(7)'' each place it appears and inserting ''(b)(8)''.

The Commentary to § 2F1.1 captioned ''Background'' is amended by inserting after the fifth paragraph the following:

''Subsection (b)(4) implements the instruction to the Commission in section 2(e) of Public Law 105–172.''.

Option 2

Section 2F1.1(b) is amended by redesignating subdivisions (4) through (7) as subdivisions (5) through (8), respectively; and by inserting after subdivision (3) the following new subdivision (4):

''(4) If the offense involved (A) the possession or use of any device-making equipment; or (B) the distribution of any counterfeit access device, increase by [2] levels.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by adding at the end the following additional note:

''21. For purposes of subsection (b)(4)—

'Device-making equipment' has the meaning given that term in 18 U.S.C. 1029(e)(6) and also includes: (A) any hardware or software that can insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such telecommunications instrument may be used to obtain telecommunications service without authorization; or (B) a scanning device [if it was used or possessed with the intent to defraud]. 'Scanning device,' and 'telecommunication identifying information' have the meaning given those terms in 18 U.S.C. 1029(e)(8) and (e)(11), respectively.

'Counterfeit access device,' has the meaning given that term in 18 U.S.C. 1029(e)(2) and includes a cloned telecommunications instrument. 'Cloned telecommunications

instrument' means a telecommunications instrument that has been unlawfully modified, or into which telecommunications identifying information has been unlawfully inserted, to obtain telecommunications service without authorization.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''(b)(4)'' and inserting ''(b)(5)''; in Note 5 by striking ''(b)(4)'' and inserting ''(b)(5)''; and in Note 6 by striking ''(b)(4)'' and inserting ''(b)(5)''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Note 15 by striking ''(b)(5)'' each place it appears and inserting ''(b)(6)''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Notes 18 and 20 by striking ''(b)(7)'' and inserting ''(b)(8)''.

The Commentary to § 2F1.1 captioned ''Background'' is amended in the sixth paragraph by striking ''(b)(5)'' and inserting ''(b)(6)''; in the seventh paragraph by striking ''(b)(6)'' and inserting ''(b)(7)''; and in the eighth and ninth paragraphs by striking ''(b)(7)'' each place it appears and inserting ''(b)(8)''.

The Commentary to § 2F1.1 captioned ''Background'' is amended by inserting after the fifth paragraph the following:

''Subsection (b)(4) implements the instruction to the Commission in section 2(e) of Public Law 105–172.''.

Issues for Comment

(1) Option 1 provides a two-pronged enhancement in the fraud guideline, § 2F1.1. The first prong covers the use or possession of any ''cloning equipment'' (including the hardware or software described in 18 U.S.C. 1029(a)(9), any other mechanism or equipment that can be used to clone a wireless telephone, and a scanning device [if the device was used with the intent to defraud]).

As an alternative to providing this enhancement in the form of a specific offense characteristic whose applicability would have to be (at least potentially) considered in every case sentenced under this guideline (i.e., over 6,000 cases in FY 1998), the Commission invites comments on whether the loss commentary could be amended to provide a presumptive loss amount or a loss amount increase if the specified conduct is proven. More specifically, the commentary could provide that if the conduct involved ''cloning equipment,'' the loss would be not less than a presumptive amount, or that loss will be not less than the presumptive amount plus any loss otherwise determined.

The use of a presumptive loss amount might guarantee a floor offense level if the conduct occurs, even if a specific offense characteristic for that conduct is not added to the guideline. On the other hand, a presumptive loss amount increase could accomplish the same effect as a floor but would have the added advantage of providing some increment over and above the ''floor'' offense level in some cases. However, because of the way the loss table increases the offense level based on increases in loss amount, a presumptive loss increase would not guarantee a set increase in offense level across the full range of loss amounts.

The Commission invites comment on whether the use of a presumptive loss amount or a presumptive loss increase is preferable to the specific offense characteristics proposed in Option One. If so, what conduct should trigger the provision? Of the presumptive loss amount or the loss increase, which is more appropriate? What is the appropriate dollar amount for the presumptive loss provision?

(2) The second prong of the proposed enhancement in Option 1 covers the manufacture and distribution of a cloned telecommunications instrument. The Commission invites comment on whether the provision should apply to all telecommunications instruments, or whether it should be limited more closely to the provisions of the Wireless Telephone Protection Act and apply only if the applicable offense conduct actually involves cloned wireless telephones.

In addition, the Commission invites comment regarding whether the second prong of the enhancement in Option 1 (relating to manufacturing cloned telecommunications instruments) should be limited to situations that involved manufacturing or distributing cloned telephones. This limitation might be justified because of the potential overlap between the first prong of the enhancement (relating to the use or possession of cloning equipment) and the broader version of the second prong.

(3) Option 2 covers possession or use of equipment that is used to manufacture access devices. (For example, the mobile identification number/electronic serial number (''MIN/ESN'') of a wireless telephone is a type of access device under 18 U.S.C. 1029). This proposal provides a [two] level enhancement if the offense involves the use or possession of any ''device-making equipment,'' broadening the statutory definition of device making equipment (found in 18 U.S.C. 1029(e)(6)) to include not only equipment that can be used to make an access device, but also the cloning hardware or software described in 18 U.S.C. 1029(a)(9). Consistent with the statute, the definition also includes a scanning device [if the device was used with the intent to defraud].

The Commission invites comment regarding whether the proposed enhancement should apply to all access devices or to only certain types of access devices.

(4) The Commission invites comment, generally, regarding whether the use of a cloned wireless telephone in connection with other criminal activity should warrant more serious punishment than the commission of the same offense without the involvement of a cloned telephone. The Commission also invites comment regarding whether the possession of a cloned wireless phone should warrant more serious punishment.

If so, the Commission invites comment regarding whether an adjustment should be added to Chapter Three that would apply to the use of a cloned wireless telephone in connection with any other offense or to the possession of a cloned wireless telephone. If so, what should the magnitude of the increase for such an adjustment be (e.g., two or four levels)? Alternatively, should a specific offense characteristic be added to one or more Chapter Two guidelines (such as § 2D1.1 or § 2F1.1)? If so, which guidelines should be amended to include the enhancement? What should the magnitude of the enhancement be (e.g., two or four levels)? If such an amendment were made, how should it affect the proposed enhancement of [two] levels for manufacturing or distribution of cloned wireless telephones in Option One, or for manufacturing or distribution of counterfeit access devices in Option Two?

The Commission also invites comment regarding whether a cross reference should be added to § 2F1.1 (and/or other relevant guidelines) that would sentence the defendant convicted of an offense involving the use or transfer of a cloned wireless telephone at the level for the offense for which the telephone was used. Such a cross reference would create the possibility that a defendant could be convicted of a less serious offense (such as an offense involving a cloned telephone that caused a small loss) but have the sentence increased to the level based on the more serious conduct that was implicated by the telephone use (such as drug trafficking) proven by a preponderance of the evidence. This

option could be implemented on its own, or in combination with some other provision.

(5) The Commission also invites comment regarding: (A) whether language should be added to the definition of loss in the commentary to § 2F1.1 to make clear that unused ESN/MIN pairs (or any or all access devices) are to be considered in determining intended loss; (B) whether a minimum or presumptive value should be established for each ESN/MIN pair or cloned wireless telephone (or any or all access devices) and, if so, (i) which should be established (a minimum or presumptive value), and (ii) what should the minimum or presumptive value be (e.g., [$500, $750, $1,000]) (and whether it should vary depending on the type of access device); and (C) whether the definition of loss should provide more specific guidance (and, if so, what guidance) as to how to determine intended loss in cases involving access devices, in general, and ESN/MIN pairs, in particular. For example, guidance could be provided that when a case involves one or more used ESN/MIN pairs (or access devices) and one or more unused pairs, the losses incurred in connection with the former should be used to determine an average loss per pair; that average loss amount could be multiplied by the number of used and unused pairs to determine the intended loss.

(6) The Commission invites comment on whether any action the Commission might take to implement the directive in the Wireless Telephone Protection Act (such as adopting either of the options described herein) should be coordinated and/or consolidated with action the Commission might take to implement the directive in the Identity Theft and Assumption Deterrence Act (such as adopting either of the options described in the proposed amendment for identity theft which can be found in 65 FR 2265 (January 18, 2000)). Specifically, the Commission invites comment on the potential interactions and/or overlap between the proposed options on identity theft and on telephone cloning. For example, to the extent that an unauthorized identification means can be a counterfeit access device, application of the enhancement proposed in Option 2 and an identity theft enhancement may, in some situations, be double-counting the same conduct. Such double-counting potentially might occur in the case of a defendant who uses device making equipment to make a credit card (an unauthorized identification means) in the name of an individual victim.

Note that there is an issue for comment in the published materials regarding possible amendments in response to the Identity Theft and Assumption Deterrence Act, regarding the possible promulgation of an amendment that would broaden the current rule in the commentary to § 2B1.1 regarding the minimum loss rule for credit cards ($100 each) to access devices, generally, and increase the minimum loss amount to $1,000 for each access device. See 65 FR 2668 (January 18, 2000).

Proposed Amendment: Firearms

(4) *Synopsis of Proposed Amendment:* Public Law 105–386 amended 18 U.S.C. 924(c) to: (A) add ''possession in furtherance of the crime'' to the list of acts for which a defendant can be convicted under the statute; (B) replace fixed terms of imprisonment (e.g., 5 years) with mandatory minimum terms of imprisonment (e.g., not less than 5 years); (C) provide tiered sanctions depending on how the firearm was used (e.g., brandished or discharged); and (D) provide a statutory definition of ''brandish.''

The principal parts of this proposed amendment are as follows:

(A) It amends § 1B1.1 (Application Instructions) to provide the definition of ''brandish'' used in 18 U.S.C. 924(c). There are two major differences between the statutory definition and the guideline definition of ''brandish.'' First, the statutory definition does not require that the firearm be displayed, or even visible, while the current guideline definition does. Second, the statutory definition requires that a firearm actually be present, while the guideline definition, which applies to any dangerous weapon, applies to toys and fakes (because the definition of ''dangerous weapon'' includes such items). The amendment proposes to apply the definition to any dangerous weapon.

(B) In response to the statutory change from fixed terms of imprisonment to mandatory minimum terms, the proposal amends § 2K2.4 to clarify that the ''term required by statute,'' with respect to 18 U.S.C. 844(h), 924(c), and 929(a), is the minimum term specified by the statute. The proposed amendment also provides for an encouraged upward departure if the minimum term does not adequately address the seriousness of the offense. Examples of when a departure may be warranted are provided.

There is also an issue for comment regarding whether the Commission should provide a cross-reference to the guideline for the underlying offense when there is no conviction for that underlying offense and the offense level for that underlying offense is greater than the minimum term required by statute.

(C) It resolves a circuit conflict regarding whether, when a defendant is convicted of both section 924(c) and the underlying offense, the court can apply a weapon enhancement when imposing the sentence for the underlying offense. Specifically, the proposal amends Application Note 2 of § 2K2.4 to clarify that, with respect to the guideline for the underlying offense, ''the underlying offense'' includes both the offense of conviction and any relevant conduct for which the defendant is accountable under § 1B1.3. Accordingly, the amended Note instructs the court not to apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm with respect to the guideline for the underlying offense. The proposed amendment also provides examples of when this rule would (and would not) apply.

The legislation also specifically added brandishing to the conduct covered by 18 U.S.C. 924(c). This proposed amendment provides a conforming amendment to Application Notes 2 and 4 and the Background Commentary of § 2K2.4 to add brandishing to the list of specific offense characteristics that are not applied with respect to the sentencing for the underlying offense.

(D) It amends § 4B1.2 to clarify that a section 924 count is not considered an ''instant offense'' for purposes of the career offender guideline. It also clarifies, in § 2K2.4, that because the sentence in this guideline is determined by the relevant statute and imposed independently, Chapters Three and Four do not apply.

(E) It provides an issue for comment regarding whether the Commission should consider including a section 924(c) count as an instant offense of conviction for purposes of the career offender guideline.

(F) It makes minor technical and conforming amendments to §§ 3D1.1 and 5G1.2 to conform these guidelines to the new mandatory minimum provisions of 18 U.S.C. 924(c).

Proposed Amendment

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 1(c) by striking ''that the weapon was pointed or waved about, or displayed in a threatening manner'' and inserting ''that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate

that person, regardless of whether the weapon was directly visible to that person''.

Section 2K2.4(a) is amended by striking ''that'' and inserting ''the minimum term''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following paragraphs:

''Sections 924(c) and 929(a) have a statutory maximum of life imprisonment. Accordingly, the court has the authority to impose a sentence above the minimum term specified if the minimum term does not adequately capture the seriousness of the offense. For example, an upward departure may be warranted if (A) the guideline for the underlying offense does not account for an aggravating factor; or (B) the defendant was not convicted of the underlying offense. Examples of factors that may warrant an upward departure include the following:

(A) the offense involved multiple firearms;

(B) the offense involved a stolen firearm or a firearm with an obliterated serial number;

(C) the offense involved serious bodily injury;

(D) the defendant is a prohibited person at the time of the offense. 'Prohibited person' has the same meaning given that term in § 2K2.1, Application Note 6.

(E) the seriousness of the defendant's criminal history is not adequately considered because the defendant was not convicted of the underlying offense.

Do not apply Chapter Three (Adjustments) and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of these chapters because the sentence for each offense is determined by the statute and is imposed independently. See §§ 3D1.1, 5G1.2.''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in Note 2 by striking the first paragraph in its entirety and inserting the following:

''If a defendant is convicted of an underlying offense in conjunction with any of the statutes covered by this guideline, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm with respect to the guideline for the underlying offense. A sentence under § 2K2.4 covers any explosive or weapon enhancement both for the underlying offense of conviction and for any other conduct for which the defendant may be accountable under § 1B1.3 (Relevant Conduct). For example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a different firearm from the one for which the defendant was convicted under section 924(c), do not apply any weapon enhancement in the guideline for the underlying offense; (B) in an ongoing drug trafficking offense, the defendant possessed firearms other than the one for which the defendant was convicted under section 924(c), do not apply any weapon enhancement in the guideline for the underlying offense. However, if a defendant is convicted of two bank robberies involving weapons, but is convicted of a section 924(c) offense in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the section 924(c) offense.''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in Note 4 in the third sentence by inserting ''brandishing,'' after ''possession,''

The Commentary to § 2K2.4 captioned ''Background'' is amended by striking ''18 U.S.C. §§ '' and inserting ''Sections'' by inserting ''of title 18, United States Code,'' following ''929(a)'' by striking ''penalties for the conduct proscribed.'' and inserting ''terms of imprisonment. A sentence imposed pursuant to any of these statutes must be imposed to run consecutively to any other term of imprisonment.'' and by inserting ''brandishing,'' after ''use,''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by striking the eighth paragraph in its entirety and inserting:

''A prior conviction under 18 U.S.C. 924(c) is a ''prior felony conviction'' for purposes of applying § 4B1.1 (Career Offender) if the prior offense of conviction established that the underlying offense was a ''crime of violence'' or ''controlled substance offense.'' (Note that if the defendant also was convicted of the underlying offense, the two convictions will be treated as related cases under § 4A1.2 (Definitions and Instruction for Computing Criminal History)).''.

The Commentary to § 4B1.2 captioned ''Application Notes is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively, and by inserting before Note 3, as redesignated by this Amendment, the following new Note 2:

''2. Pursuant to §§ 2K2.4, 3D1.1, and 5G1.2(a), a sentence for a conviction under 18 U.S.C. 924(c) is determined by the statute and is imposed independently of any other sentence. Accordingly, if the instant offense of conviction is a conviction under 18 U.S.C. 924(c), or if the instant offense of conviction includes convictions for both § 924(c) and the underlying offense, § 4B1.1 does not apply to the § 924(c) count.''.

The Commentary to § 3D1.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''minimum'' after ''mandatory'' each place it appears.

The Commentary to § 5G1.2 is amended in the fourth paragraph, by striking the second sentence in its entirety and inserting:

See, *e.g.,* 18 U.S.C. 924(c) (specifying mandatory minimum terms of imprisonment, based on the conduct involved, to run consecutively to any other term of imprisonment).''.

Issues for Comment

(1) Several guidelines provide an enhancement that applies ''if the firearm was brandished, displayed or possessed.'' See, *e.g.,* § 2B3.1 (Robbery); § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage). Given that the proposed amendment defines ''brandished'' to mean, in part, that ''all or part of the weapon was displayed,'' the Commission invites comment regarding whether, if the Commission adopts this amendment, it should make a conforming amendment to delete ''displayed'' from this enhancement as unnecessary.

(2) The Commission invites comment regarding whether it should amend § 2K2.4 to provide a cross reference to the guideline for the underlying offense when the defendant was not convicted of the underlying offense in either state or federal court and the offense level for the underlying offense is greater than the sentence provided in § 2K2.4 (*i.e.,* the minimum term required by statute)? Such amendment would also specify that the cross reference does not apply when the defendant has been convicted of the underlying offense.

(3) The proposed amendment clarifies that under current guideline application: (A) Chapters Three and Four do not apply to any sentence imposed under § 2K2.4 because the sentence is determined by the relevant statute (18 U.S.C. 844(h), 924(c), or 929(a)) and is imposed independently; and (B) because Chapter Four does not apply, the career offender guideline, § 4B1.1, does not apply when the instant offense of conviction is a section 924(c) offense. Notwithstanding current guideline application, the Commission invites comment on whether it should amend the guidelines to provide that a conviction under 18 U.S.C. 924(c) is an instant offense for career offender purposes.

If the Commission should make such an amendment, how should it be

accomplished? The Commission could, for example, develop a new guideline for 18 U.S.C. 924(c) offenses (and similar offenses) which would eliminate the current requirement that the sentence on a section 924(c) count be imposed independently and that the count be excluded from the grouping rules. See § 3D1.1. If a new guideline were developed, what should the Commission consider with respect to specific offense characteristics, cross reference provisions, and departure provisions? As an alternative to a new guideline, the Commission could provide a ''special rule'' that would apply whenever a section 924(c) defendant is also a career offender. Such a rule could provide that the offense level for the defendant's conduct is to be determined by § 4B1.1. The effect of this rule would be that the defendant's offense level, regardless of whether the defendant also is convicted of the underlying offense, would always begin at offense level 37, with a guideline range of 360-life. To satisfy the statute's requirement that the sentence be imposed consecutively to any other count, the rule could provide any of the following variations when the offense involves multiple count(s): (A) A sentence within the range of 360-life is imposed consecutive to the final guideline sentence for the additional counts; (B) the minimum term required by statute (*e.g.,* 5 years) is imposed consecutive to the final guideline sentence; or (C) the section 924(c) count is grouped with the underlying offense and the final guideline sentence is structured so that a portion of the total punishment, corresponding to the minimum term required by the statute, is imposed consecutive to the remainder of the guideline sentence. (Note that the guidelines currently use the approach in (C) when the offense involves a conviction for failure to appear and for the underlying offense. See § 2J1.6 (Failure to Appear by Defendant), comment. (n. 3).)

Issue for Comment: Circuit Conflicts

(5) *Issue for Comment:* The Commission requests public comment on whether, and in what manner, it should address by amendment the following circuit court conflicts:

(A) Whether for purposes of downward departure from the guideline range a ''single act of aberrant behavior'' (Chapter 1, Part A, § 4(d)) includes multiple acts occurring over a period of time. Compare *United States* v. *Grandmaison,* 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word ''single'' to refer to the crime committed; therefore, ''single acts of aberrant behavior'' include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); *Zecevic* v. *U.S. Parole Comm'n,* 163 F.3d 731 (2d Cir. 1998) (aberrant behavior is conduct which constitutes a short-lived departure from an otherwise law-abiding life, and the best test is the totality of the circumstances); *United States* v. *Takai,* 941 F.2d 738 (9th Cir. 1991) (''single act'' refers to the particular action that is criminal, even though a whole series of acts lead up to the commission of the crime); *United States* v. *Pena,* 930 F.2d 1486 (10th Cir. 1991) (aberrational nature of the defendant's conduct and other circumstances justified departure); with *United States* v. *Marcello,* 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning); *United States* v. *Glick,* 946 F.2d 335 (4th Cir. 1991) (conduct over a ten-week period involving a number of actions and extensive planning was not ''single act of aberrant behavior''); *United States* v. *Williams,* 974 F.2d 25 (5th Cir. 1992) (a single act of aberrant behavior is generally spontaneous or thoughtless); *United States* v. *Carey,* 895 F.2d 318 (7th Cir. 1990) (single act of aberrant behavior contemplates a spontaneous and seemingly thoughtless act rather than one which was the result of substantial planning); *United States* v. *Garlich,* 951 F.2d 161 (8th Cir. 1991) (fraud spanning one year and several transactions was not a ''single act of aberrant behavior''); *United States* v. *Withrow,* 85 F.3d 527 (11th Cir. 1996) (a single act of aberrant behavior is not established unless the defendant is a first-time offender and the crime was a thoughtless act rather than one which was the result of substantial planning); *United States* v. *Dyce,* 78 F.3d 610 (D.C. Cir.), amd on reh. 91 F.3d 1462 (D.C. Cir. 1996) (same).

If the Commission were to adopt the view that a downward departure for aberrant behavior is limited to spontaneous and thoughtless acts, it could, for example, eliminate the suggested departure language from Chapter One of the Guidelines Manual and establish a departure provision in Chapter Five, Part K, Subpart 2 (Other Grounds for Departure) for spontaneous and thoughtless acts that do not include a course of conduct composed of multiple planned criminal acts, even if the defendant is a first-time offender.

The Commission is interested in exploring an alternative approach to the majority and minority views to resolve the circuit conflict regarding departure for a ''single act of aberrant behavior.'' Assuming the guidelines permit a departure for aberrant behavior, what guidance should the Commission give the court in determining the appropriateness of granting a departure in a given case. For example, should such a departure be precluded for a defendant convicted of certain offenses, such as crimes of violence (see 28 U.S.C. 994(j) that provides that ''guidelines are to reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.* * *''). What other factors should the Commission articulate to guide the court in determining the appropriateness of a departure in a particular case?

(B) Whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only when the defendant is convicted of an offense referenced to that guideline or, alternatively, whenever the defendant's relevant conduct included drug sales in a protected location or involving a protected individual. Compare *United States* v. *Chandler,* 125 F.3d 892, 897–98 (5th Cir. 1997) (''First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section most 'applicable to the offense of conviction.' '' Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); *United States* v. *Locklear,* 24 F.3d 641 (4th Cir. 1994) (In finding that § 2D1.2 does not apply to convictions under 21 U.S.C. 841, the court relied on the fact that the commentary to § 2D1.2 lists as the ''Statutory Provisions'' to which it is applicable 21 U.S.C. 859, 860, and 861, but not 841. ''[S]ection 2D1.2 is intended not to identify a specific offense characteristic which would, where applicable, increase the offense level over the base level assigned by § 2D1.1, but rather to define the base offense level for violations of 21 U.S.C. 859, 860 and 861.''); *United States* v. *Saavedra,* 148 F.3d 1311 (11th Cir. 1998) (defendant's uncharged but relevant conduct is actually irrelevant to determining the sentencing guideline applicable to his offense; such conduct is properly considered only after the applicable guideline has been selected when the court is analyzing the various sentencing considerations within the guideline chosen, such as the base offense level, specific offense

characteristics, and any cross-references); with *United States* v. *Clay,* 117 F.3d 317 (6th Cir.), cert. denied, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 (but not convicted of any statute referenced to § 2D1.2) based on underlying facts indicating defendant involved a juvenile in drug sales); *United States* v. *Oppedahl,* 998 F.2d 584 (8th Cir. 1993) (applying § 2D1.2 to defendant convicted of conspiracy to distribute and possess with intent to distribute based on fact that defendant's relevant conduct involved distribution within 1,000 feet of school); *United States* v. *Robles,* 814 F. Supp. 1249 (E.D. Pa), aff'd (unpub.), 8 F.3d 814 (3d Cir. 1993) (court looks to relevant conduct to determine appropriate guideline).

If the Commission were to choose to clarify that the enhanced penalties in § 2D1.2 only apply in circumstances in which the defendant is convicted of an offense referenced to that guideline in the Statutory Index (Appendix A), the Commission could amend the Introduction to the Statutory Index to make clear that, for every statute of conviction, courts must apply the offense guideline referenced for the statute of conviction listed in the Statutory Index (unless the case falls within the limited exception for stipulations set forth in § 1B1.2 (Applicable Guidelines)) and that courts may not decline to use the listed offense guideline in cases that could be considered atypical or outside the heartland. See *United States* v. *Smith*, 186 F.3d 290 (3d Cir. 1999) (determined that fraud guideline, § 2F1.1, was most appropriate guideline rather than the listed guideline of money laundering, § 2S1.1); *United States* v. *Brunson*, 882 F. 2d 151, 157 (5th Cir. 1989) (''It is not completely clear to us under what circumstances the Commission contemplated deviation from the suggested guidelines for an 'atypical' case.''); *United States* v. *Hemmington*, 157 F.3d 347 (5th Cir. 1998) (affirmed trial court's departure from the money laundering guidelines to the fraud guideline).

Alternatively, or in combination with this approach, the Commission could delete § 2D1.2 and add an enhancement to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) either (A) for the real offense conduct of making drug sales in protected locations or involving protected individuals; or (B) for a conviction for such conduct.

(C) Whether the fraud guideline enhancement for ''violation of any judicial or administrative order, injunction, decree, or process'' (§ 2F1.1(b)(4)(B)) applies to falsely completing bankruptcy schedules and forms. Compare *United States* v. *Saacks*, 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of § 2F1.1(b)(3)(B)); *United States* v. *Michalek*, 54 F.3d 325 (7th Cir. 1995) (bankruptcy fraud is a ''special procedure''; it is a violation of a specific adjudicatory process); *United States* v. *Lloyd*, 947 F.2d 339 (8th Cir. 1991) (knowing concealment of assets in bankruptcy fraud violates ''judicial process''); *United States* v. *Welch*, 103 F.3d 906 (9th Cir. 1996) (same); *United States* v. *Messner,* 107 F.3d 1448 (10th Cir. 1997) (same); *United States* v. *Bellew*, 35 F.3d 518 (11th Cir. 1994) (knowing concealment of assets during bankruptcy proceedings qualifies as a violation of a ''judicial order''); with *United States* v. *Shadduck*, 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust).

See also *United States* v. *Carrozella*, 105 F. 3d 796 (2d Cir. 1997) (district court erred in enhancing the sentence for violation of judicial process where the defendant filed false accounts in probate court).

(D) Whether sentencing courts may consider post-conviction rehabilitation while in prison or on probation as a basis for downward departure at resentencing following an appeal. Compare *United States* v. *Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may consider it as a possible ground for downward departure at resentencing); *United States* v. *Core*, 125 F.3d 74, 75 (2d Cir.1997) (''We find nothing in the pertinent statutes or the Sentencing Guidelines that prevents a sentencing judge from considering post-conviction rehabilitation in prison as a basis for departure if resentencing becomes necessary.'') cert. denied, 118 S. Ct. 735 (1998); *United States* v. *Sally*, 116 F.3d 76, 80 (3d Cir. 1997) (holding that ''post-offense rehabilitations efforts, including those which occur post-conviction, may constitute a sufficient factor warranting a downward departure.''); *United States* v. *Rudolph*, 190 F.3d 720, 723 (6th Cir. 1999); *United States* v. *Green*, 152 F.3d 1202, 1207 (9th Cir. 1998) (same); *United States* v. *Brock*, 108 F.3d 31 (4th Cir. 1997) (recognizing extraordinary post-offense rehabilitation as a basis for a downward departure); with *United States* v. *Sims*, 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits.)

The Commission also invites comment on whether to distinguish between departures for post-offense rehabilitation (see §§ 3E1.1, comment. (n. 1(g) and 5K2.0) and post-sentence rehabilitation and, if so, what guidance the Commission should provide. It should be noted that a departure for post-sentencing rehabilitation is only available if there is a resentencing.

(E) Whether a court can base an upward departure on conduct that was dismissed or uncharged as part of a plea agreement in the case. Compare *United States* v. *Figaro*, 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct); *United States* v. *Kim*, 896 F.2d 678 (2d Cir. 1990) (allowing upward departure based on related conduct that formed the basis of dismissed counts and based on prior similar misconduct not resulting in conviction); *United States* v. *Baird*, 109 F.3d 856 (3d Cir.), cert. denied, 118 S. Ct. 243 (1997) (allowing upward departure based on dismissed counts if the conduct underlying the dismissed counts is related to the offense of conviction conduct; cites *United States* v. *Watts*, 519 U.S. 148 (1997)); *United States* v. *Cross*, 121 F.3d 234 (6th Cir. 1997) (allowing upward departure based on dismissed conduct; citing *Watts*); *United States* v. *Ashburn*, 38 F.3d 803 (5th Cir. 1994) (allowing upward departure based on dismissed conduct); *United States* v. *Big Medicine*, 73 F.3d 994 (10th Cir. 1995) (allowing departure based on uncharged conduct) with *United States* v. *Ruffin*, 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement); *United States* v. *Harris*, 70 F.3d 1001 (8th Cir. 1995) (same); *United States* v. *Lawton*, 193 F.3d 1087 (9th Cir. 1999) (court may not accept plea bargain and later consider dismissed charges for upward departure in sentencing).

The Commission also invites comment on whether the Commission should provide more guidance about what conduct can or cannot be considered for departure under the guidelines. More specifically, the Commission invites comment on whether to provide that departures are only permissible for conduct detailed in § 1B1.3(a)(1), (2), and (3). The implication of such a provision would

be that, most significantly, departures would be permissible only with respect to conduct that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, that is not accounted for in a guideline enhancement. Departures would be prohibited for other conduct, such as dismissed or uncharged bank robberies that are not included in relevant conduct because they are not the subject of an offense of conviction.

Proposed Amendment: Technical Amendments Package

(6) *Synopsis of Proposed Amendment*—This proposed amendment makes technical and conforming changes to various guidelines as follows:

(A) It corrects a typographical error in the counterfeiting guideline, § 2B5.1, by inserting a missing word in subsection (b)(2).

(B) It corrects a typographical error in the Chemical Quantity Table at § 2D1.11 regarding certain quantities of Isosafrole and Safrole by changing those quantities from grams to kilograms.

(C) It corrects an omission that was made during the prior Commission's final deliberations on amendments to implement the Comprehensive Methamphetamine Control Act of 1996 (the ''Act''), Pub. L. 104–237. Specifically, the proposal amends §§ 2D1.11 (Listed Chemicals) and 2D1.12 (Prohibited Equipment) to add an enhancement for environmental damage associated with methamphetamine offenses. The prior Commission intended to amend these guidelines in this manner, but due to a technical oversight, the final amendment did not implement that intent.

The Act directed the Commission to determine whether the guidelines adequately punish environmental violations occurring in connection with precursor chemical offenses under 21 U.S.C. 841(d) and (g) (sentenced under § 2D1.11), and manufacturing equipment offenses under 21 U.S.C. 843(a)(6) and (7) (sentenced under § 2D1.12). On February 25, 1997, the Commission published two options to provide an increase for environmental damage associated with the manufacture of methamphetamine, the first by a specific offense characteristic, the second by an invited upward departure. See 62 FR 8487 (Feb. 25, 1997). Both options proposed to make amendments to §§ 2D1.11, 2D1.12, and 2D1.13. Additionally, although the directive did not address manufacturing offenses under 21 U.S.C. 841(a), the Commission elected to use its broader guideline promulgation authority under 28 U.S.C. 994(a) to ensure that environmental violations occurring in connection with this more frequently occurring offense were treated similarly. Accordingly, the published options also included amendments to § 2D1.1.

The published options were revised prior to final action by the Commission. However, in the revision that was presented to the Commission for promulgation in late April 1997, amendments to §§ 2D1.11 and 2D1.12 were mistakenly omitted from the option to provide a specific offense characteristic, although that revision did refer to §§ 2D1.11 and 2D1.12 in the synopsis as well as included amendments to these guidelines in the upward departure option. (The revision did not include any amendments to guideline § 2D1.13, covering record-keeping offenses, because, upon further examination, it seemed unlikely that offenses sentenced under this guideline would involve environmental damage.) Accordingly, when the commissioners voted to adopt the option providing the specific offense characteristic for §§ 2D1.1, 2D1.11, and 2D1.12, their vote effectively was limited to what was before them, i.e., an environmental damage enhancement for § 2D1.1 only. This amendment corrects that error.

(D) It updates the Statutory Provisions of the firearms guideline, § 2K2.1, to conform to statutory re-designations made to 18 U.S.C. 924 (and already conformed in Appendix A (Statutory Index)).

(E) It updates the guidelines for conditions of probation, § 5B1.3, and supervised release, § 5D1.3. Effective one year after November 26, 1997, 18 U.S.C. 3563(a) and 3583(a) were amended to add a new mandatory condition of probation requiring a person convicted of a sexual offense described in 18 U.S.C. 4042(c)(4) (enumerating several sex offenses) to report to the probation officer the person's address and any subsequent change of address, and to register as a sex offender in the state in which the person resides. See section 115 of Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–119). Because the effective date of this change was later than the effective date of the last Guidelines Manual (November 1, 1998), the Commission did not amend the relevant guidelines, § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release) to reflect the new condition. However, the Commission did provide a footnote in each guideline setting forth the new condition and alerting the user as to the date on which the condition became effective. This proposal amends §§ 5B1.3 and 5D1.3 to include the sex offender condition as a specific mandatory condition in both guidelines rather than in a footnote.

Proposed Amendment

Section 2B5.1(b)(2) is amended by inserting ''level'' following ''increase to''.

Section 2D1.11(d) is amended in subdivision (9) by striking ''At least 1.44 G but less than 1.92 KG of Isosafrole;'' and inserting ''At least 1.44 KG but less than 1.92 KG of Isosafrole;''; and by striking ''At least 1.44 G but less than 1.92 KG of Safrole;'' and inserting ''At least 1.44 KG but less than 1.92 KG of Safrole;''.

Section 2D1.11(d) is amended in subdivision (10) by striking ''Less than 1.44 G'' before ''of Isosafrole;'' and inserting ''Less than 1.44 KG''; and by striking ''Less than 1.44 G'' before ''of Safrole;'' and inserting ''Less than 1.44 KG''.

Section 2D1.11(b) is amended by adding at the end the following subdivision:

''(3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended by adding at the end the following:

''8. Under subsection (b)(3), the enhancement applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1

(Restitution) and in fashioning appropriate conditions of supervision under § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release).''.

Section 2D1.12(b) is amended by adding at the end the following:

''(2) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.''.

The Commentary to 2D1.12 captioned ''Application Notes'' is amended by adding at the end the following:

''3. Under subsection (b)(2), the enhancement applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under § 5B1.3 (Conditions of Probation) and § 5D1.3 (Conditions of Supervised Release).''.

The Commentary to § 2K2.1 captioned ''Statutory Provisions'' is amended by striking ''(e), (f), (g), (h), (j)–(n)'' and inserting ''(e)–(i), (k)–(o)''.

Section 5B1.3(a) is amended by striking the asterisk after ''Conditions''; in subdivision (8) by striking the period after ''§ 3563(a))'' and inserting a semi-colon; and by adding at the end the following:

''(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.'';

and by striking the note at the end of the § 5B1.3 in its entirety as follows:

***Note:** Effective one year after November 26, 1997, section 3563(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of probation:

(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.''.

Section 5D1.3(a) is amended by striking the asterisk after ''Conditions''; in subdivision (6) by striking the period after ''§ 3013'' and inserting a semi-colon; and by adding at the end the following:

''(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.'';

and by striking the note at the end of § 5D1.3 in its entirety as follows:

***Note:** Effective one year after November 26, 1997, section 3583(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of supervised release:

(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.''.

[FR Doc. 00–3274 Filed 2–10–00; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice 3215]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The guest speaker at the meeting will be The Honorable Gregory Rohde, Assistant Secretary and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce. Mr. Rohde will discuss priorities for his agency in the area of telecommunications policy.

This meeting will be held on Wednesday, March 8, 2000, from 9:30 a.m.–12:30 p.m., in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, N.W., Washington, D.C. 20520. (Please note that this meeting is being held in place of the January 20 meeting which had been postponed due to inclement weather.) Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc @state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the StateDepartment building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc @state.gov>.

Dated: February 4, 2000.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 00–3247 Filed 2–10–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice No. 3213]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Meeting Notice

The Subcommittee for the Prevention of Marine Pollution, a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, February 29, 2000, at 9:30 AM in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty-fourth session of the Marine Environment Protection Committee (MEPC 44) and the agenda items of the Conference on International Co-operation on Preparedness and Response to Pollution Incidents by Hazardous and Noxious Substances (the Conference) of the International Maritime Organization (IMO). MEPC 44 and the Conference will be held in conjunction with each other from March 6–15, 2000. Proposed U.S. positions on the agenda items for MEPC 44 and the Conference will be discussed.

The major items for discussion for MEPC 44 will begin at 9:30 AM and include the following:

a. Harmful effects of the use of anti-fouling paints for ships;

b. Harmful aquatic organisms in ballast water;

c. Inadequacy of reception facilities;

d. Consideration and adoption of amendments to mandatory instruments;

e. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

f. Prevention of air pollution from ships;

g. Interpretation and amendments of MARPOL 73/78 and related Codes;

h. Promotion of implementation and enforcement of MARPOL 73/78 and related Codes; and

i. Recycling of ships.

At the conclusion of the MEPC 44 discussion, the major item for the Conference, ''Consideration and adoption of the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000,'' will be discussed.

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the meeting, contact Lieutenant Commander John Meehan, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–2714.

Dated: February 3, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–3246 Filed 2–10–00; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Establishment of Regional Resource Stewardship Council

Notice is hereby given that, in consultation with the General Services Administration, it has been determined that the establishment of an advisory committee on the Tennessee Valley Authority's (TVA) public resource management activities is necessary and in the public interest. Accordingly, TVA has chartered the Regional Resource Stewardship Council (RRSC).

The public resource management activities that will be addressed by the RRSC include the operations of TVA's dams and reservoirs, navigation, flood control, the management of public lands, as well as water quality, wildlife, and recreation. As competition for finite natural resources grows, fulfilling TVA's integrated resource stewardship mission will require increased cooperation with the other public agencies and private entities that have responsibilities for and interest in the use and conservation of the region's natural resources. It is in TVA's interest and the interest of the public it serves to establish a mechanism for routinely obtaining the views and advice of the citizens, public agencies, and private entities involved in and affecting natural resources stewardship.

All TVA stewardship activities entail the selection of priorities among competing objectives and values. TVA has many loyal and committed stakeholder groups and private citizens, each dedicated to seeing that TVA provides the public benefits that they have come to expect. TVA anticipates that the RRSC will provide a mechanism to help develop consensus views and resolve competing interests to the benefit of the public.

In order to attain a diverse and balanced membership, the RRSC will consist of up to 20 members appointed by the TVA Board of Directors as follows:

- 7 persons nominated by the Governors of the Tennessee river Valley States (one each by the Governors of Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia);
- At least 4 members representing distributors of TVA power;
- At least 1 member representing each of the following interests: a direct-served customer of TVA, a beneficiary of TVA's navigation program, a beneficiary of TVA's flood control program, a recreational interest, and an environmental interest; and
- Up to 4 additional members to ensure a balanced representative of a broad range of views.

The RRSC will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter is being filed at this time in accordance with approval by the General Service Administration Secretariat pursuant to 41 CFR 101–6.1015(a)(2).

For further information, please contact Kathryn J. Jackson, Executive Vice President, River System Operations and Environment, 400 West Summit Hill Drive, Knoxville, Tennessee, 37902.

Authority: 41 CFR 101–6.1015(a).

Dated: February 3, 2000.

O.J. Zeringue,

President and Chief Operating Officer.

[FR Doc. 00–3271 Filed 2–10–00; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6847]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) for the renewal of Information Collection Requests (ICRs). These ICRs comprise: 1. Request for Designation and Exemption of Oceanographic Research Vessel, 2. Oil Record Book for Ships, and 3. Vessel Identification System. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before April 11, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG–2000–6847], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–2000–6847] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Request for Designation and Exemption of Oceanographic Research Vessels.

OMB Control Number: 2115–0053.

Summary: 46 U.S.C. 2113(2) authorizes the Secretary of Transportation to exempt Oceanographic Research Vessels, by regulation, from provisions of Subtitle II of Title 46, Shipping, of the United States Code, concerning maritime safety and seamen's welfare.

Need: This information is necessary to ensure that a vessel qualifies for the designation.

Respondents: Owner or operator of vessel.

Frequency: On occasion.

Burden: The estimated burden is 29 hours annually.

2. *Title:* Oil Record Book for Ships.

OMB Control Number: 2115–0025.

Summary: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), the Act and the Convention require that information about oil (cargo or fuel) be entered into an Oil Record Book (CG–4602A). The requirement appears at 33 CFR 151.25.

Need: This information serves to verify sightings of actual violations of the APPS to determine the level of compliance with MARPOL 73/78 and as a means of reinforcing the discharge provisions.

Respondents: Operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 35,828 hours annually.

3. *Title:* Vessel Identification System.

OMB Control Number: 2115–0607.

Summary: The Secretary of Transportation must establish a nationwide vessel-identification system (VIS) and centralize certain vessel-documentation functions. VIS provides participating States and territories with access to their own data on numbered vessels. Participation in VIS is voluntary.

Need: 46 U.S.C. 12501 mandates the establishment of a VIS. 33 CFR part 187 prescribe the requirements of VIS.

Respondents: Governments of States and territories.

Frequency: Daily.

Burden: The estimated burden is 5,697 hours annually.

Dated: February 4, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 00–3155 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6334]

Information Collection by Agency Under Review by the Office of Management and Budget (OMB)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 13, 2000.

ADDRESSES: Please send comments to both (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG–1999–6334 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street S.W., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [64 FR 57181 (October 22, 1999)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of

automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 1999–6334. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Vessel Reporting Requirement.

OMB Control Number: 2115–0551.

Type of Request: Extension of currently approved collection.

Affected Public: Owners, charterers, managing operators, or agents of U.S. vessels.

Form(s): N/A.

Abstract: The collection of information requires the owner, charterer, managing operator, or agent of a vessel of the United States to immediately notify the Coast Guard if there is a reason to believe that his or her vessel may be lost or imperiled. The person must follow up the report with written communication submitted to the Coast Guard within 24 hours.

Annual Estimated Burden Hours: The estimated burden is 137 hours annually.

2. Title: Report of Oil or Hazardous Substance Discharge.

OMB Control Number: 2115–0137.

Type of Request: Extension of a currently approved collection.

Affected Public: Persons in charge of vessels, onshore or offshore facilities.

Forms: N/A.

Abstract: The collection of information requires that any person in charge of a vessel, an onshore or offshore facility report to the National Response Center, as soon as he or she has knowledge of any discharge of oil or a hazardous substance.

Annual Estimated Burden Hours: The estimated burden is 7,917 hours annually.

Dated: February 4, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 00–3156 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Obion and Dyer Counties, Tennessee and Fulton County, Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Obion and Dyer Counties, Tennessee and Fulton County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Doctor, Project Management Engineer, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5788.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation and the Kentucky Transportation Cabinet, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a four-lane divided freeway in Obion and Dyer Counties, Tennessee and Fulton County, Kentucky. The proposed project would involve improvements to existing Highway US 51/State Route (SR) 3 from the interchange with Highway US 412/SR 20 in Dyer County, Tennessee, north to the Purchase Parkway in Fulton County, Kentucky, for a distance of about 74 kilometers (46 miles).

The proposed improvement is a section of independent utility of the Congressionally-designated High Priority Corridor 18, or future Interstate 69. The purpose of the corridor is to improve international and interstate trade and to facilitate economic development. The proposed project would also provide a link between two existing full access-controlled highways and provide for future traffic capacity needs.

Alternatives to be considered are: (1) Taking no action; (2) three build alternatives consisting of upgrading sections of existing US 51/SR 3 and building other sections on new location; and (3) other alternatives that may arise from public and agency input. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 26, 2000.

Charles S. Boyd,

Tennessee Division Administrator, Nashville.

[FR Doc. 00–3272 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–22–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2000–6871]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:49 U.S.C. Section 5312(a) Research, Development, Demonstration and Training Projects

DATES: Comments must be submitted before April 11, 2000.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, CentralDockets Office, PL–401, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: *49 U.S.C. Section 5312(a) Research, Development, Demonstration and Training Projects*—Mr. Henry Nejako, Office of Research, Demonstration and Innovation, (202) 366–0184. *Title:* 49 U.S.C. Section 5312(a) Research,

Development, Demonstration and Training Projects (*OMB Number: 2132–0546*).

BACKGROUND: 49 U.S.C. Section 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, and demonstration projects that will reduce urban transportation needs, improve mass transportation service, or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source.

The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other Federal requirements.

Issued: February 7, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–3135 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–6473 Notice 1]

Registered Importers; Receipt of Applications for Determination of Inconsequential Noncompliance

The following companies, as registered importers under 49 U.S.C. 30141(c), imported passenger cars that failed to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection'': Auto Enterprises, Inc., Dickson Motor Sales and Leasing, Inc., JM Motors, Inc., Superior Auto Sales, Inc., Auto Import Services, Inc., Laurek International Trade Service, Inc., Elite Limited Auto Sales and Leasing, Ltd., Champagne Imports, Inc., Potsdam Importers, Inc., International Vehicle Importers, Inc., Auto King, Inc., and Liphardt and Associates, Inc. A registered importer is a firm recognized by the National Highway Traffic Safety Administration (NHTSA) as being capable of modifying vehicles that are imported into the United States to assure that they comply with all applicable FMVSS's. Under Section 30147, registered importers are obligated to notify owners and remedy safety related defects and noncompliances in these vehicles. All of the registered importers involved except for Liphardt and Associates, Inc., filed appropriate reports pursuant to 49 CFR Part 573 ''Defect and Noncompliance Reports.'' These registered reporters have also applied to be exempted from the notification and remedy requirements of Section 30118 and 30120. The basis of the applications is that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of these applications is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the applications.

The following passenger cars (''subject vehicles''), certified by their original manufacturers as complying with all applicable Canadian Motor Vehicle Safety Standards, do not comply in all respects with FMVSS No. 208:

Chrysler LeBaron, 1994 and 1995 MY
Dodge Spirit, 1994 and 1995 MY
Dodge Shadow, 1994 and 1995 MY
Dodge Viper, 1994 and 1995 MY
Plymouth Sundance, 1994 and 1995 MY
Plymouth Acclaim, 1994 and 1995 MY

Description of Noncompliance

The subject vehicles imported by the petitioners were manufactured on or after September 1, 1993, the date on which FMVSS No. 208 first required an automatic restraint for both front outboard seating positions. However, these vehicles are equipped with a driver side air bag and a passenger side type 2, 3-point shoulder/lap belt which met the standard as in effect before September 1, 1993.

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, that the motor vehicle is substantially similar to a motor vehicle of the same model year, originally manufactured for importation into and sale in the United States, and certified under 49 U.S.C. 30115, and the vehicle is capable of being readily altered to conform to all applicable FMVSSs. NHTSA has decided, on its own initiative, that the subject motor vehicles are substantially similar to motor vehicles originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year that they are, and capable of being readily altered to conform to all applicable FMVSS. See 63 FR 41617 (August 4, 1998).

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle has been determined eligible for entry. The subject vehicles were imported from Canada under the VSA–1 eligibility code, assigned to all Canadian vehicles that the Administrator decided to be eligible for importation. Documentation substantiating compliance of the subject vehicles with the FMVSS was submitted to NHTSA after importation. NHTSA then reviewed the submissions and, for the vast majority of the affected vehicles, issued a decision letter advising that the submitted documentation was acceptable. In September 1995, NHTSA informed the importers that the amended requirements of FMVSS No. 208 had not been met. The importers had misunderstood FMVSS No. 208 and had believed the passenger-side restraint could be a manual belt when the driver's side was air bag equipped. This configuration was permissible until September 1, 1993. This provision expired after that date, requiring automatic restraints on both sides. When this matter was brought to the attention of the registered importers, they stopped importing vehicles not meeting FMVSS No. 208.

Arguments by Importers

A detailed chronology of the circumstances leading to this notice is contained in the ''Notification of Defect pursuant to 49 CFR 573 and Petition pursuant to 49 CFR 556 for exemption from recall based on inconsequentiality,'' dated September 14, 1998, submitted by Superior Auto Sales, Inc. Several of the other registered importers affected joined in this petition.

A summary of petitioners' arguments follows:

The remedy for the affected vehicles would be either the installation of an automatic seat belt or passenger side air bag. Both of these options may not increase vehicle safety.

NHTSA has recently revised the passenger side air bag requirements, due to concerns regarding the extensive force of the air bag deployment. Any air bag system installed as a remedy for the affected vehicles would not meet the revised criteria. Thus, the remedy would require installation of old technology air bags. The owners of these vehicles could even petition NHTSA for permission to disable this safety feature.

There have also been considerable arguments that the automatic seat belt system, *as utilized,* only gives an appearance of protection. Many occupants of the passenger seat will not use the manual lap belt, and thus only be protected by the automatic torso belt. In a crash, the protection offered by this two-point system is questionable.

The automatic belts may also be attached to the door. In a crash, the door latch may fail, yielding no protection at all to the passenger.

The passive restraint requirement went into effect when too few states adopted mandatory seat belt laws. These laws have now been adopted in all states but one. All of the affected vehicles were sold in mandatory seat belt usage states. It is against the law in these states to be unbelted. The installation of an automatic seat belt would therefore be redundant, since the passengers are required to be belted.

The subject vehicles are 1994 and 1995 model year vehicles. Therefore, they are at least four years old and have completed at least half of their useful life. This greatly reduces the addition to safety, that might result from the installation of passenger side passive restraints.

For these reasons, the installation of a passive restraint in these few vehicles involved will not result in a significant addition to vehicle safety.

To the best of the importers' knowledge, there have been no accidents, injuries, fatalities, or warranty claims related to the noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 13, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: February 7, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–3193 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 61 (Sub–No. 6)]

National Classification Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for proposals and comments.

SUMMARY: The Surface Transportation Board (Board) seeks suggested methodologies for increasing shipper participation in the classification process, as required by the Board's decisions in *National Classification Committee—Agreement,* Section 5a Application No. 61 (STB served Dec. 18, 1998, and February 11, 2000).

DATES: Opening proposals and comments are due April 11, 2000. Reply comments are due May 11, 2000. Rebuttals are due June 12, 2000.[1]

ADDRESSES: Send an original and 10 copies of proposals, comments, and replies, referring to ''Section 5a Application No. 61 (Sub-No. 6)'' to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decisions, which are available on the Board's website at ''WWW.STB.DOT.GOV''.

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3239 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Arguing that the instant proceeding is essentially an investigation, NCC has filed a motion, to which replies were filed by The National Industrial Transportation League and by the Health and Personal Care Distribution Conference, Inc. and National Small Shipments Traffic Conference, Inc., asking for a procedural schedule under which it will be permitted to open and close the record. We understand why NCC might want to open and close in order to seek to limit the debate to whatever proposal it decides to file at the outset. But we have already held extensive proceedings, in which NCC has made several filings, and in which we have already determined that NCC's procedures should be modified. As a result, we believe that parties in addition to NCC should have an opportunity to present their proposals as an initial matter. We are, however, providing all parties with an opportunity to respond to any initial proposals or comments made, and we are providing each party that makes an initial filing with a further opportunity to present rebuttal evidence and argument in response to any comments addressing its initial filing.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 1 (Sub-No. 10)]

Household Goods Carriers Bureau Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board (Board) requests comments on whether approval of the rate bureau agreement of the Household Goods Carriers Bureau Committee (HGB) ought to be conditioned on reductions in ''benchmark'' rates to prevailing levels of market based rates.

DATES: Comments are due by March 27, 2000; replies are due March 13, 2000.

ADDRESSES: Send an original and 10 copies of comments and replies, referring to ''Section 5a Application No. 1 (Sub-No. 10)'' to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In our decisions in *EC–MAC Motor Carriers Service Association, Inc., et al.,* Sec. 5a Application No. 118 (Amendment No. 1), *et al.* (STB served Dec. 18, 1998, and February 11, 2000) (*EC–MAC*) (which are available on the Board's website at ''WWW.STB.DOT.GOV''), we conditioned renewal of motor carrier rate bureau agreements under 49 U.S.C. 13703 on reductions of collective rates to prevailing competitive rate levels. In its renewal application, HGB does not address how the concerns expressed in *EC–MAC* apply to the traffic carried by its members. It does, however, appear to us that HGB serves as a forum in which members collectively set benchmark rates, from which the actual rates paid by many householders are discounted. Therefore, before acting on HGB's application, we are seeking comment on whether any immunity granted to HGB ought to be conditioned on reductions in benchmark rates to prevailing levels of market based rates and, if so, methodologies that can be used to adjust the collectively set rates to market-based levels.

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3238 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Sec. 5a Application No. 118 (Sub–No. 2), et al.]

EC-MAC Motor Carriers Service Association, Inc., et al.[1]

AGENCY: Surface Transportation Board.

ACTION: Request for proposals and comments.

SUMMARY: The Surface Transportation Board (Board) seeks suggested methodologies that the motor carrier rate bureaus that have applied for renewal of their operating authority can use to adjust the collective rates established by their bureaus to prevailing levels of market based rates, as required by the Board's decisions in *EC-MAC Motor Carriers Service Association, Inc., et al.,* Sec. 5a Application No. 118 (Amendment No. 1), *et al.* (STB served Dec. 18, 1998, and Feb. 11, 2000).

DATES: Opening proposals or comments are due April 11, 2000. Reply comments are due May 11, 2000.

ADDRESSES: Send an original and 10 copies of proposals, comments, and replies, referring to ''Section 5a Application No. 118 (Sub–No. 2), *et al.,*'' to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8338.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decisions, which are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3136 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

[1] This proceeding embraces the following other motorcarrier rate bureau renewal applications:*Pacific Inland Tariff Bureau, Inc.—Renewal of Agreement,* Section 5a Application No. 22 (Sub–No. 8);*The New England Motor Rate Bureau, Inc.,* Section 5a Application No. 25 (Sub–No. 9); *Middlewest Motor Freight Bureau, Inc.—Renewal of Agreement,* Section 5a Application No. 34 (Sub–No. 10); *Niagara Frontier Tariff Bureau, Inc.,* Section 5a Application No. 45 (Sub–No. 16); *Southern Motor Carriers Rate Conference, Inc.,* Section 5a Application No. 46 (Sub–No. 21); *Carriers Traffic Association—Agreement,* Section 5a Application No. 55 (Amendment No. 2); *Machinery Haulers Association Inc.—Agreement,* Section 5a Application No. 58 (Sub–No. 4); *Rocky Mountain Motor Tariff Bureau, Inc.,* Section 5a Application No. 60 (Sub–No. 11); *Nationwide Bulk Trucking Association, Inc.—Agreement,* Section 5a Application No. 63 (Sub–No. 4); *Western Motor Tariff Bureau, Inc—Agreement.,* Section 5a Application No. 70 (Sub–No. 12); and *Willamette Tariff Bureau, Inc.—Renewal of Agreement,* STB Section 5a Agreement No. 116 (Sub–No. 1).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 9 (Amendment No. 8)]

Application of the National Motor Bus Traffic Association, Inc., for Extended Approval of its Conformed Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board (Board) seeks comments on whether the Board should approve the application of the National Motor Bus Traffic Association, Inc. (NBTA), for extended approval of its rate bureau agreement.

DATES: Opening comments are due March 13, 2000. Reply comments are due March 27, 2000.

ADDRESSES: Send an original and 10 copies of comments and replies, referring to ''Sec. 5a Application No. 9 (Amendment No. 8),'' to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In our decision and notice issued today in *EC–MAC Motor Carriers Service Association, Inc., et al.,* Section 5a Application No. 118 (Sub-No. 2), *et al.* (*EC–MAC*) (which are available on the Board's website at ''WWW.STB.DOT.GOV''), we expressed concern with the way in which motor freight carrier rate bureaus collectively set ''benchmark'' class rates, from which discount rates may be offered to many, but not all, shippers. We indicated our intent to approve the rate bureau agreements of the motor freight bureaus only if class rates were reduced to market-based levels, and we requested public input on ways in which to achieve our objective.

NBTA has asked to have its agreement approved. It states that, while it does file tariffs on behalf of its member carriers, its members express their rates in dollars and cents, and not as discounts off of collectively-established bureau rates. Thus, it states that the issues over which we expressed concern in the *EC–MAC* proceeding should not be factors in our consideration of its agreement.

We tend to agree with NBTA that the issues about which we raised concerns in *EC–MAC* should not be of concern here. Nonetheless, any person who believes that we should initiate further proceedings of the sort that we are pursuing in *EC–MAC,* or that the agreement should be disapproved or conditioned for other reasons may file comments.

Decided: February 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary,

[FR Doc. 00–3137 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received requests from Sidley & Austin on behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company (WB568—1/3/2000), from Stephen Brown (WB569—2/1/2000), and from Sidley & Austin on behalf of Canadian Pacific Railway Company, Soo Line Railroad Company, St. Lawrence and Hudson Railway Co. Limited, and Delaware and Hudson Railway Co., Inc. (WB471–5—February 4, 2000) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 00–3240 Filed 2–10–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; Comment Request

February 4, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 13, 2000, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0002.

Form Number: ATF F 1600.7.

Type of Review: Extension.

Title: ATF Distribution Center Contractor Survey.

Description: Information provided on ATF F 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides the users of ATF forms and publications.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 21,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 168 hours.

OMB Number: 1512–0020.

Form Number: ATF F 9 (5320.9).

Type of Review: Extension.

Title: Application and Permit for Permanent Exportation of Firearms.

Description: This form is used to obtain permission to export firearms and services as a vehicle to allow either the removal of the firearm from registration in the national Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit and by ATF to determine and collect taxes.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 70.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1512–0022.

Form Number: ATF F 5320.20.

Type of Review: Extension.

Title: Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

Description: This form is used to request permission to move certain NFA firearms in interstate or foreign commerce.

Respondents: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 400 hours.

OMB Number: 1512–0341.

Recordkeeping Requirement ID Number: ATF REC 5150/8.

Type of Review: Extension.

Title: Stills: Notices, Registration, and Records.

Description: The information collection is used to account for and regulate the distillation of distilled spirits to protect the revenue and to provide for identification of distillers.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 10.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 21 hours.

OMB Number: 1512–0354.

Recordkeeping Requirement ID Number: ATF REC 5170/3.

Type of Review: Extension.

Title: Stills: Retain Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

Description: Audit trail records show amount purchased and from whom; complete final audit trail established at distilled spirits plant. Protection of the revenue. The collection of information is contained in 27 CFR 194.234.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 455,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0357.

Recordkeeping Requirements ID Number: ATF REC 5170/6.

Type of Review: Extension.

Title: Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (variations in format or preparation of records).

Description: This recordkeeping requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type or place of retention of records of receipt or disposition for alcoholic beverages.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,029.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 515 hours.

OMB Number: 1512–0384.

Recordkeeping Requirement ID Number: ATF REC 5620/2.

Type of Review: Extension.

Title: Airlines Withdrawing Stock from Customs Custody.

Description: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has customs certification; enables ATF to verify that tax is not due; allows spirits and wines to be traced and maintains accountability. Protects tax revenue. The collection of information is contained in 27 CFR 252.80 and 252.81.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 25.

Estimated Burden Hours Per Recordkeeper: 100 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 2,500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860 Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–3165 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–13–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 13, 2000 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems/ Office of Program Services

OMB Number: 1505–0018.

Form Number: International Capital Form BL–2/BL–2(SA).

Type of Review: Extension.

Title: Treasury International Capital Form BL–2/, Custody Liabilities of Reporting Banks, Brokers and Dealers to Foreigners, Payable in Dollars.

Description: Form BL–2/BL–2(SA) as required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on U.S. international capital movements, including data on the custody liabilities of banks, other depository institutions, brokers and dealers vis-a-vis foreigners, payable in dollars.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 125.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Monthly, Semi-annually.

Estimated Total Reporting Burden: 7,500 hours.

OMB Number: 1505–0020.

Form Number: International Capital Form BQ–2, Parts 1 and 2.

Type of Review: Extension.

Title: Treasury International Capital Form BQ–2:

Part 1: Liabilities to, and Claims on, Foreigners of Reporting Bank, Broker or Dealer; and

Part 2: Domestic Customers' Claims on Foreigners Held by Reporting Bank, Broker or Dealer, Payable in foreign Currencies.

Description: Form BQ–2 is required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on U.S. international capital movements, including data on liabilities and claims, payable in foreign currencies, of banks, other depository institutions, brokers and dealers, and their domestic customers vis-a-vis foreigners.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 225.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 3,600 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–3166 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 13, 2000, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0001.

Form Number: Customs Forms 1302, 1302A, 7509, 7533 and 7533C.

Type of Review: Extension.

Title: Transportation Manifest (Cargo Declaration).

Description: Transportation Manifest (Cargo Declarations) are essential to Customs for the control of cargo and for pre-arrival targeting of shipments for enforcement examination purposes.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 26,000.

Estimated Burden Hours Per Respondent: 34 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,410,000 hours.

OMB Number: 1515–0002.

Form Number: Customs Form 7507.

Type of Review: Extension.

Title: General Declaration.

Description: This collection of information is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other (on arrival).

Estimated Total Reporting Burden: 49,950 hours.

OMB Number: 1515–0204.

Form Number: Customs Form 434.

Type of Review: Extension.

Title: North American Free Trade Agreement (NAFTA) Certificate of Origin.

Description: The objects of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25,760 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–3167 Filed 2–10–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board which provides advice to the Director of the Community Development Financial Institutions Fund.

DATES: The next meeting of the Community Development Advisory Board will be held on Thursday, February 24, 2000 at 10:00 a.m.

ADDRESSES: The Community Development Advisory Board meeting will be held at the Treasury Executive Institute, 1255 22nd Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund (the ''Fund''), U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC, 20005, (202) 622–8662 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board (the ''Advisory Board''). The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held at the Treasury Executive Institute, located at 1255 22nd Street, NW, Suite 500, Washington, DC, on Thursday, February 24, 2000 at 10:00 a.m. The room will accommodate 30 members of the public. Seats are available on a first-come, first-served basis. Participation in the discussions at the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the For Further Information Contact section, by 4:00 p.m., Monday, February 21, 2000. The meeting will include a report from director Lazar on the activities of the CDFI Fund since the last Advisory Board meeting, including programmatic, fiscal and legislative initiatives for the years 2000 and 2001.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 00–3367 Filed 2–9–00; 3:21 pm]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition-United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

DATES: Written comments should be received on or before April 11, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Dispostion—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 40,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 7, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–3182 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

DATES: Written comments should be received on or before April 11, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By legal Representative(s) of Decedent's Estate, During Administration, Of Authority To Act and Of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Abstract: The information is requested to establish legal representative of a decedent's estate authority to act and request disposition of securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,575.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 7, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–3183 Filed 2–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds of operational assistance under the per diem component of VA's Homeless Providers Grant and Per Diem Program. Specifically, programs or components or programs that have not previously applied for or received per diem in connection with a grant under VA's Homeless Providers Grant and Per Diem Program are eligible. This Notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated per diem application (plus two completed collated copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be received in Mental Health Strategic Healthcare Group, Washington, DC, by 4:00 PM Eastern Time on March 29, 2000. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: The Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule codified at 38 CFR Part 17.700.

SUBMISSION OF APPLICATION: An original completed and collated *per diem application* (plus two copies) must be submitted to the following address: Mental Health Strategic Healthcare Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Applications must be received in the Mental Health Strategic Healthcare Group by the application deadline.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Healthcare Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible programs, established after November 10, 1992, or expanded after November 30, 1999, that have not previously applied for or received per diem in connection with a grant (see 38 CFR 17.716). This program is authorized by Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992, as amended. Funding applied for under this Notice may be used for aid for service centers and supportive housing. Funding will be in the form of per diem payments issued to eligible entities for an expected period not to exceed 24 months, subject to availability of funds. For eligibility criteria please refer to 38 CFR Part 17.716.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by

sections 3 and 4 of Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C 7721 note) and has been extended through fiscal year 2003 by Public Law 106–117. The program is implemented by the final rule codified at 38 CFR Part 17.700. The final rule was published in the **Federal Register** on June 1, 1994, and February 27, 1995, and revised February 11, 1997. The regulations can be found in their entirely in 38 CFR, Volume 1, Sec. 17.700 through 17.731. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation

Approximately $5.0 million is available for the per diem component of this program. This funding is expected to be available for a maximum of 24 months, subject to the availability of funds. Nationally, this funding should create approximately 1,500 additional community-based beds for homeless veterans. In later years, continued payment is subject to availability of funds.

Application Requirements

The specific per diem application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have approximately one month to submit such information. If an applicant is unable to meet any conditions for per diem award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other applicants. Grant recipients need not reapply for per diem for programs covered by the grant. Per Diem for these programs is requested in the grant application and paid at the time of grant project completion. However, if such entities desire per diem for programs not funded by a grant award under VA's Homeless Providers Grant and Per Diem Program, an application responding to this NOFA is required.

Dated: January 31, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–2968 Filed 2–8–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
February 11, 2000

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–06]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 1999 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies are required to notify HUD by December 31, 1999, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 433–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Jeff Holste, CEMP–IP, U.S. Army Corps of Engineers, Installation Support Center, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; Corps of Engineers: Shirley Middlewarth, Army Corps of Engineers, Management and Disposal Division, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; (202) 761–0515; U.S. Navy: Charles C. Cocks, Dept. of Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; U.S. Air Force: Barbara Jenkins, Air Force Real Estate Agency (Area/MI), Bolling AFB, 112 Luke Avenue, Suite 104, Washington, DC 20332–8020; (202) 767–4184; GSA: Brian K. Polly, Office of Property Disposal, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Veterans Affairs: Anatolij Kushnir, Asset & Enterprise Development Service, Dept. of Veterans Affairs, room 419, Lafayette Bldg., 811 Vermont Ave. NW, Washington, DC 20420; (202) 565–5941; Dept. of Energy: Tom Knox, Office of Contract & Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; Dept. of Transportation: Rugene Spruill, Space Management, Transportation Administrative Service Center, DOT, 400 Seventh St. SW, room 2310, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Al Barth, Property Management, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–7283; (These are not toll-free numbers).

Dated: February 3, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V—PROPERTIES REPORTED IN YEAR 1999 WHICH ARE SUITABLE AND AVAILABLE

AIR FORCE

California

Building

Bldg. 604
Property #: 18199010237
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Property #: 18199010238
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Property #: 18199010239
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Property #: 18199010240
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Property #: 18199010241
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Property #: 18199010242
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Property #: 18199010243
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Property #: 18199010244
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized

Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.
Bldg. 617
Property #: 18199010245
Point Arena Air Force
Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.
Bldg. 618
Property #: 18199010246
Point Arena Air Force
Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—rehab.

Colorado

Building

Bldg. 964
Property #: 18199930016
Former Lowry AFB
Denver Co: CO 80220–
Status: Unutilized
Comment: 14,495 sq. ft., local land use controls, most recent use—child care/ kitchen facility.

Idaho

Building

Bldg. 516
Property #: 18199520004
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices.
Bldg. 2201
Property #: 18199520005
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Maine

Land

Irish Ridge NEXRAD Site
Property #: 18199640017
Loring AFB
Fort Fairfield Co: Aroostock ME 04742–
Status: Unutilized
Comment: 3.491 acres in fee simple.

Massachusetts

Building

Bldg. 001
Property #:18199940001
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 37,557 sq. ft., most recent use—shops/vehicle maintenance
Bldg. 002
Property #:18199940002
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 5,580 sq. ft., most recent use—office/shops
Bldg. 003
Property #:18199940003
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 3,840 sq. ft., most recent use—warehouse
Bldg. 004
Property #:18199940004
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 225 sq. ft., most recent use—shop
Bldg. 005
Property #:18199940005
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Status: Excess
Comment: 8000 sq. ft., most recent use—warehouse

Land

.07 acre
Property #:18199840007
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022–
Status: Excess
Comment: land, no utilities

Nebraska

Building

Bldg. 20
Property #:18199610004
Offutt Communications Annex
4
Silver Creek Co: Nance NE 68663–
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitoryneeds major repair

Land

Hastings Radar Bomb Scoring
Property #:18199810027
Hastings Co: Adams NE 68901–
Status: Unutilized
Comment: 11 acres

New York

Building

Bldg. 1452 & 297 acres
Property #:18199920030
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Status: Unutilized
Comment: 11,000 sq. ft. on 297 acres (67 acres of wetland), most recent use—electronic research testing, presence of asbestos/lead paint
Bldg. 1453
Property #:18199920031
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Status: Unutilized
Comment: 266 sq. ft., most recent use—generator bldg., presence of asbestos
Bldg. 1454
Property #:18199920032
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Status: Unutilized
Comment: 53 sq. ft., most recent use—switch station, presence of asbestos

South Dakota

Building

West Communications Annex
Property #:18199340051
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

ARMY

Alabama

Building

Bldg. 60101
Property #: 21199520152
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only
Bldg. 60103
Property #: 21199520154
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only
Bldg. 60110
Property #: 21199520155
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only
Bldg. 60113
Property #: 21199520156
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only

Alaska

Building

Bldgs. 420, 422, 426, 430
Property #: 21199740276
Fort Richardson
Anchorage AK 99505–6500
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only
Bldg. 789
Property #: 21199910084
Fort Richardson
Anchorage Co: AK 99505–6500
Status: Excess
Comment: 19,001 sq. ft., concrete block, most recent use—vehicle maint., off-site use only
Bldg. 263
Property #: 21199930111
Fort Richardson
Ft. Richardson Co: AK 99505–

Status: Excess
Comment: 13056 sq. ft., most recent use—housing, off-site use only
Bldg. 636
Property #: 21199930112
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 33,726 sq. ft., concrete block, most recent use—library, off-site use only
Bldg. 736
Property #: 21199930113
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 7090 sq. ft., most recent use—admin., off-site use only
Bldg. 786
Property #: 21199930114
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 2242 sq. ft., most recent use—driver's testing facility, off-site use only
Bldg. 978
Property #: 21199930116
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 2411 sq. ft., concrete block, most recent use—training, off-site use only
Bldg. 980
Property #: 21199930117
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 11,651 sq. ft., concrete block, most recent use—vehicle maintenance, off-site use only
Bldg. 58780
Property #: 21199930118
Fort Richardson
Ft. Richardson Co: AK 99505–
Status: Excess
Comment: 3230 sq. ft., most recent use—admin., off-site use only

Arizona

Building

Bldg. 30012, Fort Huachuca
Property #: 21199310298
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage
Bldg. S–306
Property #: 21199420346
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only
Bldg. 503, Yuma Proving Ground
Property #: 21199520073
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only
5 Bldgs.
Property #: 21199840129
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 44101, 44102, 44124, 44125, 44201
Status: Excess
Comment: various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only
Bldgs. 87821, 90420
Property #: 21199910087
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 377 and 5662 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. 12521, 13572
Property #: 21199920183
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Status: Unutilized
Comment: 448 sq. ft. & 54 sq. ft., off-site use only
Bldgs. 43101–43109
Property #: 21199940001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 969 sq. ft. per unit, 2-units per bldg., wood/stucco, presence of asbestos/lead paint, most recent use—housing, off-site use only

California

Building

Bldg. 4282
Property #: 21199810378
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Status: Unutilized
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—office
Bldg. 4461
Property #: 21199810379
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—storage
Bldg. 104
Property #: 21199910088
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 8039 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 106
Property #: 21199910089
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 1950 sq. ft., presence of asbestos/lead paint, most recent use—office/storage, off-site use only
Bldg. 125
Property #: 21199910090
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 339
Property #: 21199910092
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 5654 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 340
Property #: 21199910093
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 6500 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 341
Property #: 21199910094
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. 4214
Property #: 21199910095
Presidio of Monterey
Monterey Co: CA 93944–
Status: Unutilized
Comment: 3168 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Colorado

Building

Bldg. P–1008
Property #: 21199630127
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Status: Unutilized
Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only
Bldg. P–1007
Property #: 21199730210
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only
Bldg. T–1342
Property #: 21199730211
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.
Bldg. T–6005
Property #: 21199730213
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse

Georgia

Building

Bldg. 2285
Property #: 21199011704
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4491
Property #: 21199014916
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 1252, Fort Benning
Property #: 21199220694
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg 4881, Fort Benning
Property #: 21199220707
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg 4963, Fort Benning
Property #: 21199220710
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

2396, Fort Benning
Property #: 21199220712
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 4882, Fort Benning
Property #: 21199220727
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4967, Fort Benning
Property #: 21199220728
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4977, Fort Benning
Property #: 21199220736
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Property #: 21199220747
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Property #: 21199220752
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Property #: 21199220753
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg 4884, Fort Benning
Property #: 21199220762
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Property #: 21199220763
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4966, Fort Benning
Property #: 21199220764
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Property #: 21199220769
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Property #: 21199220779
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Property #: 21199220780
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 4023, Fort Benning
Property #: 21199310461
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Property #: 21199310462
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4067, Fort Benning
Property #: 21199310465
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only

Bldg. 10501
Property #: 21199410264
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only

Bldg. 11813
Property #: 21199410269
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 70 sq. ft.; 1 story metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Property #: 21199410270
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Property #: 21199410272
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Property #: 21199410273
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg. 4051, Fort Benning
Property #: 21199520175
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 2141
Property #: 21199610655
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only

Bldg. 322
Property #: 21199720156
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Property #: 21199720161
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2593
Property #: 21199720167
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Property #: 21199720168
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldgs. 2865, 2869, 2872

Property #:21199720169
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only

Bldg. 4476
Property #: 21199720184
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.

8 Bldgs.
Property #: 21199720189
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only.

Bldg. 4714
Property #: 21199720191
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only.

Bldg. 4702
Property #: 21199720192
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only.

Bldgs. 4712–4713
Property #: 21199720193
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., need rehab, most recent use—company headquarters bldg., off-site use only.

Bldg. 305
Property #: 21199810268
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only.

Bldg. 318
Property #: 21199810269
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only.

Bldg. 1792
Property #: 21199810274
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only.

Bldg. 1836
Property #: 21199810276
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only.

Bldg. 4373
Property #: 21199810286
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg., off-site use only.

Bldg. 4628
Property #: 21199810287
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only.

Bldg. 92
Property #: 21199830278
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 2445
Property #: 21199830279
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only.

Bldg. 4232
Property #: 21199830291
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only.

Bldg. 39720
Property #: 21199930119
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 492
Property #: 21199930120
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint., off-site use only.

Bldg. 880
Property #: 21199930121
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only

Bldg. 1370
Property #: 21199930122
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2288
Property #: 21199930123
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2290
Property #: 21199930124
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only

Bldg. 2293
Property #: 21199930125
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Property #: 21199930126
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin., off-site use only

Bldg. 2505
Property #: 21199930127
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only

Bldg. 2508
Property #: 21199930628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only

Bldg. 2815
Property #: 21199930129
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 3815
Property #: 21199930130
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only

Bldg. 3816
Property #: 21199930131
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only

Bldg. 4555
Property #: 21199930132
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 18,240 sq. ft., most recent use—maint. shop, off-site use only

Bldg. 5886
Property #: 21199930134
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only

Bldg. 5974–5978
Property #: 21199930135
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized

Comment: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Property #: 21199930136
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Property #: 21199930137
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Land

Land (Railbed)
Property #: 21199440440
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

Hawaii

Building

P–88
Property #: 21199030324
Aliamanu Military
Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.

Bldg. T–675A
Property #: 21199640202
Schofield Barracks
Wahiawa HI 96786–
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office, off-site use only.

Bldg. T–337
Property #: 21199640203
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Illinois

Building

Bldg. 54
Property #: 21199620666
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.

Bldgs. HP113, 114
Property #: 21199920186
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Status: Unutilized
Comment: 2864 sq. ft. and 3458 sq. ft., most recent use—admin., off-site use only.

Bldgs. HP432–439
Property #: 21199920189
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Status: Unutilized
Comment: 4845 sq. ft. each, presence of asbestos, most recent use—admin/storage, off-site use only.

Bldgs. HP459, 460
Property #: 21199920191
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Status: Unutilized
Comment: 4848 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Kansas

Building

Bldg. 166, Fort Riley
Property #: 21199410325
Ft. Riley Co: Geary K 66442–
Status: Unutilized
Comment:3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.

Bldg. 184, Fort Riley
Property #: 21199430146
Ft. Riley KS 66442–
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.

Bldg. P–390
Property #: 2199740295
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 4713 sq. ft., presence of lead based paint, most recent use—swine house, off-site use only.

Bldg. T–323
Property #: 21199810297
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 720 sq. ft., most recent use—boy scout bldg., off-site use only.

Bldg. T–688
Property #: 21199810298
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 832 sq. ft., possible lead paint, most recent use—girl scout bldg., off-site use only.

Bldg. T–895
Property #: 21199810299
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 228 sq. ft., possible lead paint, most recent use—storage, off-site use only.

Bldg. P–68
Property #: 21199820153
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only.

Bldg. P–69
Property #: 21199820154
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 224 sq. ft., most recent use—storage, off-site use only

Bldg. P–93
Property #: 21199820155
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 63 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–128
Property #: 21199820156
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 79 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–321
Property #: 21199820157
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only

Bldg. P–347
Property #: 21199820158
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 2135 sq. ft., most recent use—bath house, off-site use only

Bldg. P–397
Property #: 21199820159
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage, off-site use only

Bldg. S–809
Property #: 21199820160
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only

Bldg. S–830
Property #: 21199820161
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. S–831
Property #: 21199820162
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. T–2360
Property #: 21199830310
Fort Riley
Ft. Riley KS
Status: Unutilized
Comment: 4534 sq. ft., needs major rehab, most recent use—aces. fac.

Bldgs. P–104, P–105, P–106
Property #: 21199830313
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage, off-site use only

Bldg. P–108
Property #: 21199830314
Fort Leavenworth
Leavenworth KS 66027–

Status: Unutilized
Comment: 138 sq. ft., most recent use—storage, off-site use only

Bldg. P–147
Property #: 21199830315
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 378 sq. ft., most recent use—storage, off-site use only

Bldgs. P–163, P–169
Property #: 21199830316
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only

Bldg. P–164
Property #: 21199830317
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 145 sq. ft., most recent use—storage, off-site use only

Bldg. P–171
Property #: 21199830318
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

Bldg. P–172
Property #: 21199830319
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only

Bldgs. P–173, P–174
Property #: 21199830320
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Bldg. P–243
Property #: 21199830321
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only

Bldg. P–146
Property #: 21199920198
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 196 sq. ft., most recent use—utility, off-site use only

Bldg. P–149
Property #: 21199920199
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 76 sq. ft., most recent use—utility, off-site use only

Bldg. P–150
Property #: 21199920200
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 96 sq. ft., most recent use—utility, off-site use only

Bldg. P–162
Property #: 21199920201
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 81 sq. ft., most recent use—utility, off-site use only

Bldg. P–242
Property #: 21199920202
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 4680 sq. ft., most recent use—storage, off-site use only

Bldg. T–71
Property #: 21199930139
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only

Bldg. P–75
Property #: 21199930140
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 12,129 sq. ft., most recent use—storage, off-site use only

Bldg. P–76
Property #: 21199930141
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only

Bldgs. P–26, P–97
Property #: 21199930142
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 84 sq. ft., most recent use—utility, off-site use only

Bldgs. P–110, P–114, P–115
Property #: 21199930143
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 85–92 sq. ft., most recent use—utility, off-site use only

Bldg. P–118
Property #: 21199930144
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 117 sq. ft., most recent use—storage, off-site use only

Bldgs. P–160, P–161, P–165
Property #: 21199930145
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 86—88 sq. ft., most recent use—utility, off-site use only

Bldg. P–223
Property #: 21199930146
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 7,174 sq. ft., most recent use—storage, off-site use only

Bldg. T–236
Property #: 21199930147
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 4563 sq. ft., most recent use—storage, off-site use only

Bldg. P–241
Property #: 21199930148
Fort Leavenworth
Leavenworth CO: KS 66027–
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only

Bldg. T–257
Property #: 21199930149
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only

Bldg. P–309
Property #: 21199930150
Fort Leavenworth
Leavenworth Co: KS 66027–
Status: Unutilized
Comment: 71 sq. ft., most recent use—storage, off-site use only

Bldg. T347
Property #: 21199940012
Fort Riley
Ft. Riley Co: Manhattan KS 66442–
Status: Unutilized
Comment: 2888 sq. ft., most recent use—storage, off-site use only

Louisiana

Building

Bldg. 8405, Fort Polk
Property #: 21199640524
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8407, Fort Polk
Property #: 21199640525
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8408, Fort Polk
Property #: 21199640526
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8414, Fort Polk
Property #: 21199640527
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8423, Fort Polk
Property #: 21199640528
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8424, Fort Polk
Property #: 21199640529
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8426, Fort Polk
Property #: 21199640530
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized

Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8427, Fort Polk
Property #: 21199640531
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8428, Fort Polk
Property #: 21199640532
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8429, Fort Polk
Property #: 21199640533
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8430, Fort Polk
Property #: 21199640534
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8431, Fort Polk
Property #: 21199640535
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8432, Fort Polk
Property #: 21199640536
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8433, Fort Polk
Property #: 21199640537
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8446, Fort Polk
Property #: 21199640538
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8449, Fort Polk
Property #: 21199640539
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Bldg. 8450, Fort Polk
Property #: 21199640540
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8458, Fort Polk
Property #: 21199640542
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8459, Fort Polk
Property #: 21199640543
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8460, Fort Polk
Property #: 21199640544
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8461, Fort Polk
Property #: 21199640545
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8462, Fort Polk
Property #: 21199640546
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8463, Fort Polk
Property #: 21199640547
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8501, Fort Polk
Property #: 21199640548
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1687 sq. ft., most recent use—office

Bldg. 8502, Fort Polk
Property #: 21199640549
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8541, Fort Polk
Property #: 21199640551
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8542, Fort Polk
Property #: 21199640552
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8543, Fort Polk
Property #: 21199640553
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8544, Fort Polk
Property #: 21199640554
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8545, Fort Polk
Property #: 21199640555
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8546, Fort Polk
Property #: 21199640556
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8547, Fort Polk
Property #: 21199640557
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8548, Fort Polk
Property #: 21199640558
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8549, Fort Polk
Property #: 21199640559
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 4960 A–F
Property #: 21199940013
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4412 sq. ft., most recent use—housing, off-site use only.

Bldg. 5143 A–D
Property #: 21199940014
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only.

Bldg. 5179 A–F
Property #: 21199940015
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459—
Status: Underutilized
Comment: 8969 sq. ft., most recent use—housing, off-site only.

Bldg. 5253 A–D
Property #: 21199940016
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459—
Status: Underutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only.

Bldg. 5846 A–E
Property #: 21199940017
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 3919 sq. ft., most recent use—housing, off-site use only.

Bldg. 5903 A–F
Property #: 21199940018
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 5719 sq. ft., most recent use—housing, off-site use only.

Bldg. 5909 A–B
Property #: 21199940019
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2025 sq. ft., most recent use—housing, off-site use only.

Bldg. 6169 A–D
Property #: 21199940020
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2850 sq. ft., most recent use—housing, off-site use only.

Bldg. 6475 A–B
Property #: 21199940021

Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 5100 sq. ft., most recent use—housing, off-site use only.

Bldg. 6477 A–D
Property #: 21199940022
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Unutilized
Comment: 5972 sq. ft., most recent use—housing, off-site use only.

Bldg. 6704 A–D
Property #: 21199940023
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Unutilized
Comment: 5972 sq. ft., most recent use—housing, off-site use only.

Bldg. 6810 A–D
Property #: 21199940024
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Status: Unutilized
Comment: 6193 sq. ft., most recent use—housing, off-site use only.

Maryland

Building

Bldg. 370
Property #: 21199730256
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible abestos/lead paint.

Bldg. 2446
Property #: 21199740305
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2472
Property #: 21199740306
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 4700
Property #: 21199740309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 6294
Property #: 21199810302
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only.

Bldg. 3176
Property #: 21199810303
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. E5813
Property #: 21199830326
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 69 sq. ft., presence of asbestos/lead paint, most recent use—storage.

Bldg. 00307
Property #: 21199930152
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 4071 sq. ft., most recent use—admin., off-site use only.

Bldg. 00646
Property #: 21199930153
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 880 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 01110
Property #: 21199930154
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 396 sq. ft., most recent use—magazine, off-site use only.

Bldg. 01195
Property #: 21199930115
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only.

Bldg. E3264
Property #: 21199930156
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only.

Bldg. E3333
Property #: 21199930157
Aberdeen Proving Gound
Aberdeen Co: Harford MD 21005–
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only.

Bldgs. 2454–2457
Property #: 21199940025
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos, most recent use—admin./health clinics, off-site use only.

Bldg. 2478
Property #: 21199940026
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 2534 sq. ft., needs rehab, presence of asbestos, most recent use—health clinic, off-site use only.

Bldg. 2845
Property #: 21199940027
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 6104 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Land

13 acres
Property #: 21199930151
West side of Rt 175
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5111
Status: Underutilized
Comment: small paved area, remainder wooded.

Missouri

Building

Bldg. T599
Property #: 21199230260
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T2171
Property #: 21199340212
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only.

Bldg. T6822
Property #: 21199340219
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.

Bldg. T1497
Property #: 21199420441
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2139
Property #: 21199420446
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2191
Property #: 21199440334
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2-story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T2197
Property #: 21199440335

Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T590
Property #: 21199510110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T2385
Property #: 21199510115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldgs. T2340 thru T2343
Property #: 21199710138
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose.

Bldg. 1226
Property #: 21199730275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1271
Property #: 21199730276
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1280
Property #: 21199730277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1281
Property #: 21199730278
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1282
Property #: 21199730279
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1283
Property #: 21199730280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1284
Property #: 21199730281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1285
Property #: 21199730282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1286
Property #: 21199730283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1287
Property #: 21199730284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1288
Property #: 21199730285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. 1289
Property #: 21199730286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 430
Property #: 21199810305
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only.

Bldg. 758
Property #: 21199810306
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 759
Property #: 21199810307
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 760
Property #: 21199810308
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldgs. 761–766
Property #: 21199810309
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1650
Property #: 21199810311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.

Bldg. 2111
Property #: 21199810312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.

Bldg. 2170
Property #: 21199810313
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2204
Property #: 21199810315
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2225
Property #: 21199810316
Fort Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2271
Property #: 21199810317
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2275
Property #: 21199810318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2291
Property #: 21199810319
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 510 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2318
Property #: 21199810322
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2579
Property #: 21199810325
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 176 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2580
Property #: 21199810326
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, most recent use—generator plant, off-site use only.

Bldg. 4199
Property #: 21199810327
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 386
Property #: 21199820163
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4902 sq. ft., presence of asbestos/lead paint, most recent use—fire station, off-site use only.

Bldg. 401
Property #: 21199820164
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 856
Property #: 21199820166
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 859
Property #: 21199820167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1242
Property #: 21199820168
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1265
Property #: 21199820169
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1267
Property #: 21199820170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1272
Property #: 21199820171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1277
Property #: 21199820172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 2142, 2145, 2151–2153
Property #: 21199820174
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 2150
Property #: 21199820175
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. 2155
Property #: 21199820176
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 2156, 2157, 2163, 2164
Property #: 21199820177
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 2165
Property #: 21199820178
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. 2167
Property #: 21199820179
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 2169, 2181, 2182, 2183
Property #: 21199820180
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 2186
Property #: 21199820181
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2187
Property #: 21199820182
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.
Bldgs. 2192, 2196, 2198
Property #: 21199820183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldgs. 2304, 2306
Property #: 21199820184
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 12651
Property #: 21199820186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only.
Bldg. 1448
Property #: 21199830327
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only.
Bldg. 2210
Property #: 21199830328
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 808 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 2270
Property #: 21199830329
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 6036
Property #: 21199910101
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Status: Underutilized
Comment: 240 sq. ft., off-site use only.
Bldg. 9110
Property #: 21199910108
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.
Bldgs. 9113, 9115, 9117
Property #: 21199910109
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.
Bldg. 493
Property #: 21199930158
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Unutilized
Comment: 26936 sq. ft., concrete, presence of asbestos/lead paint, most recent use—store, off-site use only.

Nevada

Land

Parcel A
Property #: 21199012049
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.
Parcel B
Property #: 21199012056
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.
Parcel C
Property #: 21199012057
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.
Parcel D
Property #: 21199012058
Hawthorne Army Ammunition
Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP'S South Magazine Area at western edge of State Route 359.
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

New Jersey

Building

Bldg. 22
Property #: 21199740311
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only.
Bldg. 178
Property #: 21199740312
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only.
Bldg. 642
Property #: 21199740314
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only.
Bldg. 732
Property #: 21199740315
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only.
Bldg. 1604
Property #: 21199740321
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only.
Bldg. 3117
Property #: 21199740322
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only.
Bldg. 3201
Property #: 21199740324
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only.
Bldg. 3202
Property #: 21199740325
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only.
Bldg. 3219
Property #: 21199740326
Armament R&D Engineering
Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only.

New Mexico

Building

68 Housing Units
Property #: 21199940028
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 1269 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing, off-site use only.
Facility 11230

Property #: 21199940029
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 1620 sq. ft., needs major repair, presence of asbestos, most recent use—housing unit, off-site use only.

3 Facilities
Property #: 21199940030
White Sands Missile Range
#00651, 00637, 00716
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 1509 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing units, off-site use only.

17 Garages
Property #: 21199940031
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 598 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only.

37 Garages
Property #: 21199940032
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Status: Unutilized
Comment: 312 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only.

New York

Building

4 Bldgs.
Property #: 21199830336
Stewart Army Subpost
United States Military
Academy
New Windsor Co: Orange NY 12553–
Location:
#2000, 2002, 2004, 2006
Status: Unutilized
Comment: 35,356 sq. ft., fair possible asbestos/lead paint, most recent use—lodging.

7 Bldgs.
Property #: 21199830339
Stewart Army Subpost
United States Military
Academy
New Windsor Co: Orange NY 12553–
Location:
#2400, 2402, 2404, 2500, 2506, 2514, 2516
Status: Unutilized
Comment: 21,972 sq. ft., poor, possible asbestos/lead paint, most recent use—storage/admin.

Bldg. T–35
Property #: 21199840143
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1296 sq. ft., most recent use—admin., off-site use only.

Bldg. S–149
Property #: 21199840144
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2488 sq. ft., most recent use—admin., off-site use only.

Bldg. T–250
Property #: 21199840145
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only.

Bldg. T–254
Property #: 21199840146
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only.

Bldg. T–260
Property #: 21199840147
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2371 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–261
Property #: 21199840148
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–262
Property #: 21199840149
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–340
Property #: 21199840150
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only.

Bldg. T–392
Property #: 21199840151
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—storage, off-site use only.

Bldg. T–413
Property #: 21199840152
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only.

Bldg. T–415
Property #: 21199840153
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1676 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–530
Property #: 21199840154
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–840
Property #: 21199840155
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only.

Bldg. T–892
Property #: 21199840156
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–991
Property #: 21199840157
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. P–996
Property #: 21199840158
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 9602 sq. ft., most recent use—storage, off-site use only.

Bldg. S–998
Property #: 21199840159
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1432 sq. ft., most recent use—storage, off-site use only.

Bldg. T–2159
Property #: 21199840160
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1948 sq ft., off-site use only.

Bldg. T–2329
Property #: 21199840163
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2027 sq. ft., most recent use—museum, off-site use only.

Bldg. P–2415
Property #: 21199840164
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 214 sq. ft., most recent use—incinerator, off-site use only.

Bldg. P–21572
Property #: 21199840167
Fort Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 240 sq. ft., most recent use—bunker, off-site use only.

Bldg. P–87
Property #: 21199920203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Status: Unutilized
Comment: 360 sq. ft., needs rehab, most recent use—admin., off-site use only.

Land

Land—6.965 Acres
Property #: 21199540018
Dix Avenue
Queensbury Co: Warren NY 12801–
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

Ohio

Building

15 Units
Property #: 21199230354
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom 8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only.

7 Units
Property #: 21199230355
Military Family Housing
Garages

Ravenna Army Ammunition
Plant
Ravenna Co: Portage OH 44266–9297
Status: Excess
Comment: 1—4 stall garage and 6—3 stall garages, presence of asbestos, off-site use only.

Oklahoma

Building

Bldg. T–2606
Property #: 21199011273
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
Property #: 21199220609
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property #: 21199240659
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–4050 Fort Sill
Property #: 21199240676
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–3325, Fort Sill
Property #: 21199240681
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T1652, Fort Sill
Property #: 21199330380
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5637 Fort Sill
Property #: 21199330419
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–4226
Property #: 21199440384
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P–1015, Fort Sill
Property #: 21199520197
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–366, Fort Sill
Property #: 21199610740
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–1800,
Property #: 21199710033
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,545 sq. ft., possible asbestos and leadpaint, most recent use—military equipment, off-site use only.

Building T–2952
Property #: 21199710047
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only.

Building P–5042
Property #: 21199710066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only.

6 Buildings
Property #: 21199710085
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.

4 Buildings
Property #: 21199710086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.

Building P–6539
Property #: 21199710087
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Bldg. T–208
Property #: 21199730344
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–214
Property #: 21199730346
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldgs. T–215, T–216
Property #: 21199730347
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6300 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–217
Property #: 21199730348
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–810
Property #: 21199730350
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only.

Bldgs. T–837, T–839
Property #: 21199730351
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–934
Property #: 21199730353
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1177
Property #: 21199730356
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only.

Bldgs. T–1468, T–1469
Property #: 21199730357
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1470
Property #: 21199730358
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1940
Property #: 21199730360
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized

Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1954, T–2022
Property #: 21199730362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2180
Property #: 21199730363
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: possible asbestos/lead paint, most recentuse—vehicle maint. facility, off-site use only.

Bldgs. T–2184
Property #: 21199730364
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2185
Property #: 21199730365
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2186, T–2188, T–2189
Property #: 21199730366
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2187
Property #: 21199730367
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2209
Property #: 21199730368
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2240, T–2241
Property #: 21199730369
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2262, T–2263
Property #: 21199730370
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldgs. T–2271, T–2272
Property #: 21199730371
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2291, T–2296
Property #: 21199730372
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

5 Bldgs.
Property #: 21199730373
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2406
Property #: 21199730374
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

3 Bldgs.
Property #: 21199730376
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–2434
Property #: 21199730377
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldgs. T–3001, T–3006
Property #: 21199730383
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–3025
Property #: 21199730384
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only.

Bldg. T–3314
Property #: 21199730385
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–3323
Property #: 21199730387
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. T–4021, T–4022
Property #: 21199730389
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 442—869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–4065
Property #: 21199730390
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldg. T–4067
Property #: 21199730391
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–4281
Property #: 21199730392
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–4401, T–4402
Property #: 21199730393
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–4407
Property #: 21199730395
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

4 Bldgs.
Property #: 21199730396
Fort Sill
#T–4410, T–4414, T–4415,
T–4418
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

5 Bldgs.
Property #: 21199730397
Fort Sill
#T–4411 thru T–4413, T–4416
thru T–4417
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.

Bldg. T–4421

Property #: 21199730398
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3070 sq. ft. possible asbestos/lead paint, most recent use—dining, off-site use only.
10 Bldgs.
Property #: 21199730399
Fort Sill
#T–4422 thru T–4427, T–4431
thru T–4434
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.
6 Bldgs.
Property # :21199730400
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4445, T–4448, T–4449
Status: Unutilized
Comment: 1311–2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
5 Bldgs.
Property #: 21199730401
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.
Bldg. T–5041
Property #: 21199730409
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–5044, T–5045
Property #: 21199730410
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only.
4 Bldgs.
Property #: 21199730411
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–5420
Property #: 21199730414
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.
Bldg. T–5639
Property #: 21199730416
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldgs. T–7290, T–7291
Property #: 21199730417
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-set use only.
Bldg. T–7775
Property #: 21199730419
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only.
Bldg. T–207
Property #: 21199910130
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 19,531 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldgs. P–364, P–584, P–588
Property #: 21199910131
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.
Bldg. P–599
Property #: 21199910132
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only.
4 Bldgs.
Property #: 21199910133
Fort Sill
P–617, P–1114, P–1386
P–1608
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.
Bldg. P–746
Property #: 21199910135
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. P–1908, P–2078
Property #: 21199910136
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 106 & 131 sq ft., possible asbestos/lead paint, most recent use–utility plant, off-site use only.
Bldg. T–2183
Property #: 21199910139
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 14,530 sq. ft., possible asbestos/lead paint, most recent use—repair shop, off-site use only.
Bldgs. P–2581, P–2773
Property #: 21199910140
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–2582
Property #: 21199910141
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. S–2790, P–2906
Property #: 21199910142
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1602 and 1390 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–2909
Property #: 21199910143
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.
Bldgs. P–2912, P–2944
Property #: 21199910144
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. S–3169
Property #: 21199910145
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6437 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–2914
Property #: 21199910146
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–3469
Property #: 21199910147
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only.
Bldg. S–3559
Property #: 21199910148
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9462 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–4064
Property #: 21199910149
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only.

Bldg. T–4748
Property #: 21199910151
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1896 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–5086
Property #: 21199910152
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only.

Bldg. P–5101
Property #: 21199910153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. P–5638
Property #: 21199910155
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–6430
Property #: 21199910156
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6461
Property #: 21199910157
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6462
Property #: 21199910158
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. P–7230
Property #: 21199910159
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only.

Bldg. S–7960
Property #: 21199930159
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–7961
Property #: 21199930160
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 36 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Pennsylvania

Building

Bldg. T884
Property #: 21199940039
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T889
Property #: 21199940040
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T894
Property #: 21199940041
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1555 sq. ft., needs major repair, presence of asbestos, most recent use—maint. facility, off-site use only.

Bldg. T879
Property #: 21199940042
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1850 sq. ft., needs major repair,presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T895
Property #: 21199940043
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—maint. facility, off-site use only.

South Carolina

Building

Bldg. 3499
Property #: 21199730310
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Property #: 21199820187
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Property #: 21199820188
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage.

Texas

Building

Bldg. P–377, Fort Sam Houston
Property #: 21199330444
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. T–5901
Property #: 21199330486
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. 4480, Fort Hood
Property #: 21199410322
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–6615
Property #: 21199440454
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Bldg. 4201, Fort Hood
Property #: 21199520201
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only.

Bldg. 4202, Fort Hood
Property #: 21199520202
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 5400 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–197
Property #: 21199640220
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. T–230
Property #: 21199640221
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 18102 sq. ft., presence of asbestos/lead paint, most recent use—printing plant and shop, off-site use only.

Bldg. S–3898
Property #: 21199640235
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–3899
Property #: 21199640236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. P–5126
Property #: 21199640240
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 189 sq. ft., off-site use only.

Bldg. P–6201
Property #: 21199640241
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3003 sq. ft., presence of asbestos/lead paint, most recent use—officers family quarters, off-site use only.

Bldg. P–6202
Property #: 21199640242
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1479 sq. ft., presence of lead paint, most recent use—officers family quarters, off-site use only.

Bldg. P–6203
Property #: 21199640243
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1381 sq. ft., presence of lead paint, most recent use—military family quarters, off-site use only.

Bldg. P–6204
Property #: 21199640244
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1454 sq. ft., presence of asbestos/lead paint, most recent use—military family quarters, off-site use only.

Bldg. 7137, Fort Bliss
Property #: 21199640564
El Paso Co: El Paso TX 79916–
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.

Building 4630
Property #: 21199710088
Fort Hood
Fort Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only.

Bldg. T–330
Property #: 21199730315
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only.

Bldgs. P–605A & P–606A
Property #: 21199730316
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only.

Bldg. S–1150
Property #: 21199730317
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only.

Bldgs. S–1440—S–1446, S–1452
Property #: 21199730318
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only.

4 Bldgs.
Property #: 21199730319
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only.

Bldg. P–4115
Property #: 21199730327
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint historic bldg., most recent use—admin., off-site use only.

Bldg. 4205
Property #: 21199730328
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. T–5113
Property #: 21199730330
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—medical clinic, off-site use only.

Bldg. T–5122
Property #: 21199730331
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only.

Bldg. T–5903
Property #: 21199730332
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–5907
Property #: 21199730333
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–6284
Property #: 21199730335
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 120 sq. ft., presence of lead paint, most recent use—pump station, off-site use only.

Bldg. T–5906
Property #: 21199730420
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site only.

Bldg. P–1382
Property #: 21199810365
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. P–2014
Property #: 21199810367
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. P–2015
Property #: 21199810368
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 11,333 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–2016
Property #: 21199810369
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 11,517 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–2017
Property #: 21199810370
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. S–3897
Property #: 21199810371
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. S–1155
Property #: 21199830347
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2100 sq. ft., good, hazard abatement required, most recent use—instruction bldg., off-site use only.

Bldg. S–3896
Property #: 21199830349

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., fair, hazard abatement required, most recent use—training, off-site use only.

Bldg. T–5123
Property #: 21199830350
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance.

Bldg. P–6150
Property #: 21199830351
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—pumphouse, off-site use only.

Bldgs. P–6331, P–6335, P–6495
Property #: 21199830353
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only.

Bldg. P–8000
Property #: 21199830354
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1776 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

9 Bldgs.
Property #: 21199830355
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 8265
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

11 Bldgs.
Property #: 21199830356
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8003, P8011, 8012, 8043, 8202, 8204, 8216, 8235, 8241, 8261
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P–8003C, P–8220C
Property #: 21199830357
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P–8004
Property #: 21199830358
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 21199830359
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, P8101, 8107, 8141, 8146, 8150
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

15 Bldgs.
Property #: 21199830360
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8006, P8007, 8010, 8013, 8015, 8017, 8020, 8029, 8103, 8105, 8201, 8208, 8218, 8225, 8234
Status: Unutilized
Comment: 1703 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 31199830361
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Status: Unutilized
Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830362
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8027C, 8248C, 8256C
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830363
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8016
Property #: 21199830364
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830365
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8223, 8243, 8226
Status: Unutilized
Comment: 246 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–8022
Property #: 21199830366
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

5 Bldgs.
Property #: 21199830367
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8022C, 8023C, 8106C, 8127C, 8206C
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldgs. P8026, P8028
Property #: 21199830369
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1850 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830370
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Status: Unutilized
Comment: 838 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830372
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830375
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8109, P8137
Property #: 21199830376
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8112, P8228
Property #: 21199830378
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830380
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8116, 8151, 8158
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8117
Property #: 21199830381
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000

Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8122, P8123
Property #: 21199830383
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8126
Property #: 21199830384
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830386
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8131C, 8139C, 8203C, 8221C, 8231C, 8243C, 8249C, 8261C
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldgs. P8133, P8134
Property #: 21199830387
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8135, P8136
Property #: 21199830388
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1500 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830389
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location:
#P8144, 8267, 8148, 8149
Status: Unutilized
Comment: approx. 2200 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8171
Property #: 21199830392
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1289 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8172
Property #: 21199830393
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1597 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8173, P8174
Property #: 21199830394
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 2200 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8174C
Property #: 21199830395
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 670 sq. ft., fair hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8175
Property #: 21199830396
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2220 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8200
Property #: 21199830397
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 892 sq. ft., fair hazard abatement required, most recent use—officers quarters, off-site use only.

Bldg P8200C,
Property #: 21199830398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 924 sq. ft., fair hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8205
Property #: 21199830399
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1745 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830400
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8206, 8232, 8233
Status: Unutilized
Comment: approx. 2400 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg P8245
Property #: 21199830401
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2876 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8262C, 8271C
Property #: 21199830403
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1006 sq. ft., fair hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8269
Property #: 21199830404
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2396 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

20 Bldgs.
Property #: 21199830405
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Status: Unutilized
Comment: 2777 sq. ft., fair hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–1374
Property #: 21199840169
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 111,448 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—barracks, off-site use only.

Bldg. P–1980
Property #: 21199840170
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2989 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—radio system, off-site use only.

Bldg. P–1981
Property #: 21199840171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only.

Bldg. P–2396
Property #: 21199840173
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1080 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only.

Bldg. P–4226
Property #: 21199840172
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1809 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—storage, off-site use only.

Bldg. 2842
Property #: 21199840177

Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 2650 sq. ft., most recent use—admin., off-site use only.

Bldg. 2843
Property #: 21199840178
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2845
Property #: 21199840180
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2846
Property #: 21199840181
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 36
Property #: 21199920204
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2250 sq. ft., needs repair,most recent use—ACS center, off-site use only.

Bldg. 37
Property #: 21199920205
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 38
Property #: 21199920206
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2700 sq. ft., needs repair, most recent use—gen. inst., off-site use only.

Bldg. 39
Property #: 21199920207
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 41
Property #: 21199920208
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 1750 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 43–44
Property #: 21199920209
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2750 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 209–212
Property #: 21199920210
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 213
Property #: 21199920211
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 7670 sq. ft., needs repair, most recent use—operations, off-site use only.

Bldg. 919
Property #: 21199920212
Fort Hood
Ft. Hood Co: Coryell 76544–
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only.

Bldg. 923
Property #: 21199920213
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 4440 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 924
Property #: 21199920214
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3500 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3949–3950
Property #: 21199920219
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—Bn. Hq. Bldg., off-site use only.

Bldg. 3951
Property #: 21199920220
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2500 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3952–3953
Property #: 21199920221
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3954–3957
Property #: 21199920222
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 3958
Property #: 21199920223
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. 3959
Property #: 21199920224
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3960–3962
Property #: 21199920225
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3964–3965
Property #: 21199920226
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—Bn. Hq., Bldg., off-site use only.

Bldg. 3966
Property #: 21199920227
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 2741 sq. ft., needs repair, most recent use—Co. Hq. Bldg., off-site use only.

Bldgs. 3967–3969
Property #: 21199920228
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3970–3971
Property #: 21199920229
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only.

Land

Old-Camp Bullis Road
Property #: 21199420461
Fort Sam Houston
San Antonio Co: Bexar 78234–5000
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Castner Range
Property #: 21199610788
Fort Bliss
El Paso Co: El Paso TX 79916–
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

Virginia

Building

Bldg. 178
Property #: 21199940046
Fort Monroe
Ft. Monroe Co: VA 23651–
Status: Unutilized
Comment: 1180 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. T246
Property #: 21199940047
Fort Monroe
Ft. Monroe Co: VA 23651–
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only.

Washington

Building

13 Bldgs., Fort Lewis
Property #: 21199630199
A0402, CO723, CO726, CO727, CO902
CO907, CO922, CO923, CO926, CO927

Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

7 Bldgs., Fort Lewis
Property #: 21199630200
A0438, A0439, C0901, C0910, C0911
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.

6 Bldgs., Fort Lewis
Property #: 21199630204
C0908, C0728, C0921, C0928, C1008
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. C0909, Fort Lewis
Property #: 21199630205
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C0920, Fort Lewis
Property #: 21199630206
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1249, Fort Lewis
Property #: 21199630207
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1164, Fort Lewis
Property #: 21199630213
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1307, Fort Lewis
Property #: 21199630216
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage., off-site use only.

Bldg. 1309, Fort Lewis
Property #: 21199630217
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage., off-site use only.

Bldg. 2167, Fort Lewis
Property #: 21199630218
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis
Property #: 21199630219
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis
Property #: 21199630220
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404, Fort Lewis
Property #: 21199640570
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1419, Fort Lewis
Property #: 21199640571
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only.

11 Buildings
Property #: 21199710143
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: #EO103–EO106, EO306, EO315–EO316, EO343–EO344 EO353–EO354
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs, EO109, EO350
Property #: 21199710144
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO120, EO321, EO338
Property #: 21199710145
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

5 Bldgs.
Property #: 21199710146
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: #EO127, EO136, EO302, EO204, EO330
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only.

Bldg. EO136
Property #: 21199710147
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO158, EO303
Property #: 21199710148
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1675 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO202
Property #: 21199710149
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO312
Property #: 21199710150
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO322
Property #: 21199710151
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2250 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. EO325
Property #: 21199710152
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3336 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO329
Property #: 21199710153
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO334
Property #: 21199710154
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3779 sq. ft., possible asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. EO355
Property #: 21199710155
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. EO347
Property #: 21199710156
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. EO349, EO110
Property #: 21199710157
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use–office, off-site use only.

4 Bldgs.
Property #: 21199710158

Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: #EO351, EO308, EO207, EO108
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO352, EO307
Property #: 21199710159
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO355
Property #: 21199710160
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only.

Bldg. B1008, Fort Lewis
Property #: 21199720216
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only.

Bldgs. B1011–B1012, Fort Lewis
Property #: 21199720217
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft. and 114 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. CO509, CO709, CO720
Property #: 21199810372
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only.

4 Bldgs.
Property #: 21199810373
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only.

11 Bldgs.
Property #: 21199810374
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only.

Bldg. 1021
Property #: 21199830418
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—carport, off-site use only.

Bldg. 5162
Property #: 21199830419
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. A0631
Property #: 21199830422
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. C1246
Property #: 21199830426
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 7670 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0813
Property #: 21199830427
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0812
Property #: 21199830428
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. B0228
Property #: 21199830429
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2739 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C0409
Property #: 21199830431
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1948 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 9575
Property #: 21199830432
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 17,217 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only.

Bldg. 5224
Property #: 21199830433
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only.

Bldg. 9794
Property #: 21199830435
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—vet. fac., off-site use only.

Bldg. 4540
Property #: 21199840183
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 4541
Property #: 21199840184
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 880 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 4542
Property #: 21199840185
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only.

Bldg. 4549
Property #: 21199840186
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 26220 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—green house heat plant, off-site use only.

Bldg. U001B
Property #: 21199920237
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U001C
Property #: 21199920238
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

10 Bldgs.
Property #: 21199920239
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

6 Bldgs.
Property #: 21199920240
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U004D
Property #: 21199920241
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

Bldg. U005A
Property #: 21199920242
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U006A, U024A
Property #: 21199920243
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U007A, U021A
Property #: 21199920244
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

7 Bldgs.
Property #: 21199920245
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only.

Bldg. U015J
Property #: 21199920246
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U018B
Property #: 21199920247
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U018C
Property #: 21199920248
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U024B
Property #: 21199920249
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U024D
Property #: 21199920250
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only.

Bldg. U027A
Property #: 21199920251
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only.

Bldg. U028A–U032A
Property #: 21199920252
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U031A
Property #: 21199920253
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only.

Bldg. U031C
Property #: 21199920254
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint off-site use only.

Bldg. U040D
Property #: 21199920255
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U052C,UO52H
Property #: 21199920256
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U035A, U035B
Property #: 21199920257
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U035C
Property #: 21199920258
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U039A
Property #: 21199920259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U039B
Property #: 21199920260
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only.

Bldg. U039C
Property #: 21199920261
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

Bldg. U043A
Property #: 21199920262
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U052A
Property #: 21199920263
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U052E
Property #: 21199920264
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. U052G
Property #: 21199920265
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

3 Bldgs.
Property #: 21199920266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U0558A, U103A, U018A
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U059A
Property #: 21199920267
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U093B
Property #: 21199920268
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess

Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

4 Bldgs.
Property #: 21199920269
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U102B
Property #: 21199920270
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1058 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U108A
Property #: 21199920271
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 31,320 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only.

Bldg. U110B
Property #: 21199920272
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

6 Bldgs.
Property #: 21199920273
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only.

Bldg. U112A
Property #: 21199920274
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U115A
Property #: 21199920275
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U507A
Property #: 21199920276
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use4—support, off-site use only.

Bldg. U516B
Property #: 21199920277
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only.

7 Bldgs.
Property #: 21199920278
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0002, F0004, F0003, F0005, F0006, F0008, F0009
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. F0022A
Property #: 21199920279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 4373 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only.

Bldg. F0022B
Property #: 21199920280
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C0120
Property #: 21199920281
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only.

Bldg. A0220
Property #: 21199920282
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only.

18 Bldgs.
Property #: 21199920283
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0337, A0617, B0820, B0821, C0319, C0833, C0310, C0311, C0318, C1019, D0712, D0713, D0720, D0721, D1108, D1153, C1011, C1018
Status: Excess
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only.

Bldg. A0334
Property #: 21199920284
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

7 Bldgs.
Property #: 21199920285
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C0302, C0303, C0306, C0322, C0323, C0326, C0327
Status: Excess
Comment: 2340 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only.

12 Bldgs.
Property #: 21199920287
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C13333, C1334
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. E1010
Property #: 21199920288
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 148 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. D1154
Property #: 21199920289
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only.

Bldg. 01205
Property #: 21199920290
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 01259
Property #: 21199920291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 01266
Property #: 21199920292
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. B1410
Property #: 21199920293
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—motor repair, off-site use only.

Bldg. 1445
Property #: 21199920294
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.

Bldg. 02082
Property #: 21199920295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 03091, 03099
Property #: 21199920296
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldgs. 03100, 3101
Property #: 21199920297
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 4040
Property #: 21199920298
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 8,326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only.

Bldgs. 4072, 5104
Property #: 21199920299
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldgs. 4295
Property #: 21199920300
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 5170
Property #: 21199920301
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only.

Bldgs. 6191
Property #: 21199920303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3,663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only.

Bldgs. 08076, 08080
Property #: 21199920304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 3,660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldgs. 08093
Property #: 21199920305
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only.

Bldgs. 8279
Property #: 21199920306
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only.

Bldgs. 8280, 8291
Property #: 21199920307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 8956
Property #: 21199920308
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 9530
Property #: 21199920309
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldgs. 9574
Property #: 21199920310
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 6,005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only.

Bldgs. 9596
Property #: 21199920311
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only.

Bldgs. 9939
Property #: 21199920313
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. E0324
Property #: 21199920314
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Excess
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

COE

Arkansas

Land

Parcel 01
Property #: 31199010071
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
Property #: 31199010072
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
Property #: 31199010073
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
Property #: 31199010074
DeGray Lake
Sections 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
Property #: 31199010075
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
Property #: 31199010076
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
Property #: 31199010077
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
Property #: 31199010078
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
Property #: 31199010079
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
Property #: 31199010080
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
Property #: 31199010081
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Property #: 31199010083
Sections 7, 8, and 18

Murfreesboro Co: Pike AR 71958–9720
Status: Unutilized
Comment: 46 acres.

Kansas

Building

Project Residence
Property #: 31199940001
Perry Lake Drive
Perry Co: Jefferson KS 66073–9727
Status: Excess
Comment: 1440 sq. ft., off-site use only.

Land

Parcel 1
Property #:31199010064
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Status: Unutilized
Comment: 61 acresl most recent use—recreation.

Kentucky

Building

Green River Lock & Dam #3
Property #:31199010022
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam 3
Property #:31199010060
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Status: Unutilized
Comment: 897 sq. ft.; 2 story frame; structural deficiencies.

Bldg. 1
Property #:311990111628
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Property #:311990111629
Kentucky River Lock and Dam 3
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Property #:31199320002
Moutardrier Recreation Site
Co: Edmonson KY
Status: Unutilized
Comment: 541 sq. ft.; concrete block, off-site use only.

Bldg. 3
Property #:31199920001
Rough River Lake Project
Louisville Co: Breckenridge KY 40232–
Status: Excess
Comment: 496 sq. ft.; concrete block, most recent use—water treatment, off-site use only.

Land

Tract 2625
Property #:31199010025
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Property #:31199010026
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1
Property #:31199010027
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 3.59 acres; rooling and wooded; no utilities.

Tract 2800
Property #:31199010028
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Property #:31199010029
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Property #:31199010031
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Property #:31199010032
Barkley Lake, Kentucky, and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Property #:31199010033
Barkley Lake, Kentucky, and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Property #: 31199010034
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Property #: 31199010035
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Property #: 31199010036
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Property #: 31199010042
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Property #: 31199010044
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Property #: 31199010045
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, Ky
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Property #: 31199010046
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Property #: 31199010047
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Property #: 31199010048
Barkley Lake, Kentucky and Tennessee

Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Property #: 31199010049
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Property #: 31199010050
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Property #: 31199010051
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Property #: 31199010052
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Property #: 31199010053
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Property #: 31199010054
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Property #: 31199010055
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Property #: 31199010056
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tracts 5203 and 5204
Property #: 31199010058
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Property #: 31199010059
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Property #: 31199011621
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Property #: 31199011622
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Property #: 31199011623
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Status: Utilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Property #: 31199011624
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Property #: 311990011625
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Property #: 31199011626
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Property #: 31199011627
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Property #: 31199130002
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Property #: 31199130003
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Property #: 31199130005
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Property #: 31199140009
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Property #: 31199320003
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Status: Unutilized
Comment: Approx. 3.5 acres (sloping) access monitored.

Portion of Lock & Dam No. 2
Property #: 31199320004
Kentucky River
Lockport Co: Henry KY 40036–9999
Status: Underutilized
Comment: Approx. 13.14 acres (sloping), access monitored.

Louisiana

Land

Wallace Lake Dam and Reservoir
Property #: 31199011009
Shreveport Co: Caddo LA 71103–
Status: Unutilized
Comment: 10.81 acres; wildlife/ forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Property #: 31199011010
Location: 35 miles Northeast of Shreveport, La.
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Land

Parcel D

Property #: 31199011038
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Property #: 31199011040
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Property #: 31199011041
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, Mn.
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Land

Parcel 7
Property #: 31199011019
Grenada Lake
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Property #: 31199011020
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 30 acres: no utilities; intermittently used under lease—expires 1994.

Parcel 9
Property #: 31199011021
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Property #: 31199011022
Grenada Lake
Sections 16, 17, 18 T24N
R8E
Grenada Co: Calhoun MS 38901–0903
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Property #: 31199011023
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Property #: 31199011024
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Property #: 31199011025
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Property #: 31199011026
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Sttus: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Property #: 31199011027
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Property #: 31199011028
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Property #: 31199011029
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Property #: 31199011030
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Property #: 31199011031
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 28901–0903
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Property #: 31199011032
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 16
Property #: 31199011033
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 17
Property #: 31199011034
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Yalobusha MS 28901–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 18
Property #: 31199011035
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Yalobusha MS 28902–0903
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management;

Parcel 19
Property #: 31199011036
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Yalobusha MS 28901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management;

Missouri

Land

Harry S Truman Dam & Reservoir
Property #: 31199030014
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road ''B'', part of Bledsoe Ferry Park Tract 150.
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Ohio

Building

Barker Historic House
Property #: 31199120018
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and sam structure
Status: Underutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab. on Natl Register of Historic Places, no utilities, off-site use only.

Dwelling No. 2
Property #: 31199810005
Delaware Lake, Highway 23
North
Delaware OH 43015–
Status: Excess
Comment: 2-story brick w/basement, most recent use—residential presence of asbestors/lead paint, off-site use only.

Oklahoma

Building

Water Treatment Plant
Property #: 31199630001
Belle Starr, Eufaula Lake
Eufaula Co. McIntosh OK 74432–
Status: Excess
Comment: 16′x16′ metal, off-site use only.

Water Treatment Plant
Property #: 31199630002
Gentry Creek, Eufaula Lake

Eufaula Co. McIntosh OK 74432–
Status: Excess
Comment: 12′ x16′ metal, off-site use only.

Land

Pine Creek Lake
Property #: 31199010923
(See County) Co: McCurtain OK
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Building

Mahoning Creek Reservior
Property #: 31199210008
New Bethlehem Co: Armstrong PA 16242–
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

Dwelling
Property #: 31199620008
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Govt. Dwelling
Property #: 31199640002
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential.

Dwelling
Property #: 31199710009
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.

Dwelling #1
Property #: 31199740002
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740003
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #3
Property #: 31199740004
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 1847 sq. ft., most recent use—office, good condition, off-site use only.

Govt Dwelling
Property #: 31199740005
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Status: Underutilized
Comment: Approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1
Property #: 31199740006
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740007
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Property #: 31199740008
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740009
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199830003
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential.

Residence/Office
Property #: 31199940002
Cowanesque Lake Project
Lawrenceville Co: Tioga PA 16929–
Status: Unutilized
Comment: 1653 sq. ft. residence, and 2,640 sq. ft. storage bldg., need major repairs, no operating sanitary facilities.

Land

Mahoning Creek Lake
Property #: 31199010018
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property #: 31199011001
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Property #: 31199011011
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property #: 31199430012
Crooked Creek Lake, LR 03051
Ford City Co.: Armstrong PA 16226–
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Building

Cheatham Lock & Dam
Property #: 31199520003
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Status: Unutilized
Comment: 1100 sq. ft. w/storage blgds on 7 acres, needs major rehab, contamination issues, 1 acre in fldwy, off-site use only modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Land

Tract 6827
Property #: 31199010927
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Property #: 31199010928
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Property #: 31199010929
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
Property #: 31199010930
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Status: Excess
Comment: 14.48 acres; subject to existing easement.

Tract 2227
Property #: 31199010931
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
Property #: 31199010932
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Property #: 31199010933

Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
Property #: 31199010934
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
Property #: 31199010935
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Property #: 31199010936
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tract 8813, 8814
Property #: 31199010937
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 2½ miles East of Cumberland City.
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Property #: 31199010938
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Property #: 31199010939
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Property #: 31199010940
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Property #: 31199010941
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Property #: 31199010943
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Property #: 31199010944
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Property #: 31199011173
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Property #: 31199130007
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Property #: 31199140006
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Property #: 31199140007
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Property #: 31199140008
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Property #: 31199140010
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Virginia

Building

Metal Bldg.
Property #: 31199620009
John H. Kerr Dam & Reservoir
Co: Boydton VA
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only.

West Virginia

Building

Dwelling 1
Property #: 31199810003
Summersville Lake
Summersville Co: Nicholas WV 26651–9802
Status: Excess
Comment: 1200 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

Dwelling 2
Property #: 31199810004
Sutton Lake
Sutton Co: Braxton WV 26651–9802
Status: Excess
Comment: 1100 sq. ft., most recent use—residential, off-site use only.

Wisconsin

Building

Former Lockmaster's Dwelling
Property #: 31199011524
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 1224 sq. ft., 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 31199011525
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 908 sq. ft., 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property #: 31199011527
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 31199011531
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 31199011533
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Property #: 31199011535
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway ''D'') and River Street.
Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property #: 31199011536
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

DOT

California

Building

3 Bachelor Enlisted Quarters
Property #: 87199810001
U.S. Coast Guard Station
Humboldt Bay
Samoa CA 95564–9999
Status: Unutilized
Comment: 2550 sq. ft. each, 2-story, wood, most recent use—residential, needs rehab, off-site use only.

Massachusetts

Building

Plymouth Light
Property #: 87199420003
Plymouth Co: Plymouth MA
Status: Unutilized
Comment: 250 sq. ft. tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing.

ENERGY

Missouri

Building

Bldg. 82
Property #: 41199930031
Kansas City Plant
Bannister Road
Kansas City Co: MO 00000–
Status: Excess
Comment: 128 sq. ft., concrete, off-site use only.

Bldg. 83
Property #: 41199930032
Kansas City Plant
Bannister Road
Kansas City Co: MO 00000–
Status: Excess
Comment: 166 sq. ft., concrete, off-site use only.

GSA

California

Building

Calexico Border Patrol Station
Property #: 54199930007
813 Andrade Avenue
Calexico Co: CA 00000–
Status: Excess
Comment: 7420 sq. ft.
GSA Number: 9–J–CA–1539

District of Columbia

Building

William A. White Bldg.
Property #: 54199930006
2700 Martin Luther King Ave., SE
Washington Co: 20032–
Status: Excess
Comment: 150,952 sq. ft. on 2 acres, needs repair, presence of asbestos/lead paint, controlled access, mental hospital campus.
GSA Number: 4–F–DC–479

Florida

Building

Crooked River Lighthouse
Property #: 54199940017
Carrabelle Co: Franklin FL 32322–
Status: Excess
Comment: Lighthouse on 1.29 acres, possible lead base paint, listed on National Register of Historic Places.
GSA Number: 4–U–FL–1165

Illinois

Building

Homewood Natl Guard Facility
Property #: 54199940002
1300 West 187th Street
Homewood Co: Cook IL 60430–
Status: Excess
Comment: 4 old barracks, 5 storage bldgs., 1 guard house, need major repairs.
GSA Number: 5–D–IL–651

Army Reserve Center
Property #: 54199940008
1881 East Fremont Street
Galesburg Co: Know IL 61401–
Status: Excess
Comment: 2 brick buildings (6117 & 1325 sq. ft.), utilities turned off, need repairs, most recent use—storage
GSA Number: 1–D–IL–720

Kentucky

Land

Segments 15–19
Property #: 54199940009
South Williamson Project
S. Williamson Co: Pike KY 41503–
Status: Excess
Comment: 30.4 acres/105 tracts, special floodplain restrictions
GSA Number: 4–D–KY–608

Louisiana

Land

Sulphur Mines Well Site
Property #: 54199930026
Highway 90–W
Sulphur Co: Calcasieu Parish LA 70663–
Status: Surplus
Comment: 68.02 acres w/4 capped brine injection wells, majority of land densely wooded, located on Gulf Coastal Plain
GSA Number: 7–B–UT–431–M

Maryland

Building

Washington Court Apartments
Property #: 54199940005
Maryland Rt. 755
Edgewood Co: Harford MD 21040–
Status: Excess
Comment: 55 bldgs. housing 276 apartments, (2 to 4 bedrooms), need repairs, presence of lead based paint
GSA Number: 4–D–MD–559

Minnesota

Building

GAP Filler Radar Site
Property #: 54199910009
St. Paul Co: Rice MN 55101–
Status: Excess
Comment: 1266 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage, zoning requirements
GSA Number: 1–GR (1)–MN–475

MG Clement Trott Mem. USARC
Property #: 54199930003
Walker Co: Cass MN 56484–
Status: Excess
Comment: 4320 sq. ft. training center and 1316 sq. ft. vehicle maintenance shop, presence of environmental conditions
GSA Number: 1–D–MN–575

Missouri

Building

Hardesty Federal Complex
Property #: 54199940001
607 Hardesty Avenue
Kansas City Co: Jackson MO 64124–3032
Status: Excess
Comment: 7 warehouses and support buildings (540 to 216,000 sq. ft.) on 17.47 acres, major rehab, most recent use—storage/office, utilities easement
GSA Number: 7–G–MO–637

New Jersey

Building

Barnegat Recreation Facility
Property #: 54199930001
Corner 7th St/Longbeach Blvd.
Barnegat Light Co: NJ 08006–
Status: Surplus
Comment: 2700 Sq. Ft. Cottage on 0.69 acres, presence of asbestos/lead paint, eligible for Historic Register, floodplain, endangered species in area
GSA Number: 1–U–NJ–0641

New York

Building

''Terry Hill''
Property #: 541998830008
County Road 51
Manorville NY
Status: Surplus
Comment: 2 block structures, 780/272 sq. ft., no sanitary facilities, most recent use—storage/comm. facility, w/6.19 acres in fee and 4.99 acre easement, remote area
GSA Number: 1–D–NY–864

Binghampton Depot
Property #: 54199910015
Nolans Road
Binghampton Co: NY 00000–
Status: Excess
Comment: 45,977 sq. ft., needs repair, presence of asbestos, most recent use—office
GSA Number: 1–G–NY–760A

Ohio

Building

Lorain Housing
Property #: 54199840006
238–240 Augusta Ave.
Lorain OH 44051–

Status: Excess
Comment: 3000 sq. ft. duplex, 2-story, good condition, possible lead based paint, existing easements
GSA Number: 1–U–OH–814

Land

Jersey Tower Site
Property #: 54199910013
Tract No. 100 & 100E
Jersey Co: Licking OH 00000–
Status: Surplus
Comment: 4.24 acres, subject to preservation of wetlands
GSA Number: 1–W–OH–813

Pennsylvania

Building

Rices Landing
Property #: 54199930009
Tracts A–L; 1–4
Old Lock & Dam #6
Rices Landing Co: Greene PA 15357–
Status: Excess
Comment: 2 residences—1400 sq. ft. ea., need repairs, 1 metal warehouse 1 shed, possible asbestos/lead paint
GSA Number: 4–D–PA–0786

Puerto Rico

Land

Bahia Rear Range Light
Property #: 51499940003
Ocean Drive
Catano Co: PR 00632–
Status: Excess
Comment: 0.167 w/skeletal tower, fenced, aid to navigation
GSA Number: 1–T–PR–508

Tennessee

Building

3 Facilities, Guard Posts
Property #: 51499930011
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 48–64 sq. ft., most recent use—access control
GSA Number: 4–D–TN–594F

4 Bldgs.
Property #: 51499930012
Volunteer Army Ammunition
Plant
Railroad System Facilities
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 144–2,420 sq. ft., most recent use—storage/rail weighing facilities/dock, potential use restrictions
GSA Number: 4–D–TN–594F

8 Bldgs.
Property #: 51499930013
Volunteer Army Ammunition
Plant
Missile Assembly
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: concrete block bldgs. on approx. 100 acres, most recent use—assembly/storage/buffer, potential use restrictions
GSA Number: 4–D–TN–594F

200 bunkers
Property #: 51499930014
Volunteer Army Ammunition
Plant
Storage Magazines
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: approx. 200 concrete bunkers covering a land area of approx. 4000 acres, most recent use—storage/buffer area, potential use restrictions
GSA Number: 4–D–TN–594F

Bldg 232
Property #: 51499930020
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 10,000 sq. ft., most recent use—office, presence of asbestos, approx. 5 acres associated w/bldg., potential use restrictions
GSA Number: 4–D–TN–594F

2 Laboratories
Property #: 51499930021
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 2000–12,000 sq. ft., potential use/lease restrictions
GSA Number: 4–D–TN–594F

3 Facilities
Property #: 54199930022
Volunteer Army Ammunition
Plant
Water Distribution
Facilities
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: 256–15,204 sq. ft., 35.86 acres associated w/bldgs., most recent use—water distribution system, potential use/lease restrictions
GSA Number: 4–D–TN–594F

Land

1500 acres
Property #: 54199930015
Volunteer Army Ammunition
Plant
Chattanooga Co: Hamilton TN 37421–
Status: Surplus
Comment: scattered throughout facility, most recent use—buffer area, steep topography, potential use restrictions
GSA Number: 4–D–TN–594F

Texas

Building

Formerly Naval Rsv Center
Property #: 54199940019
1818 N. Confederate St.
Tyler Co: Smith TX 75702–
Status: Surplus
Comment: 11,370 sq. ft. bldg./.96 acres, most recent use—reserve center/office, subject to existing easements
GSA Number: 7–N–TX–984A

Utah

Building

Salt Lake City Admin. Bldg.
Property #: 54199930005
1745 W 1700 S
Salt Lake City Co: UT 84104–
Status: Surplus
Comment: 36,060 sq. ft., 2-story concrete/brick, needs repair, presence of asbestos, most recent use—office/storage
GSA Number: 7–G–UT–429

Land

Monticello Mill Tailings Site
Property #: 54919940020
Monticello Co: San Juan UT 00000–
Status: Excess
Comment: 383.24 acres, listed as an EPA NPL Site—clean up in process, floodplain
GSA Number: 7–B–UT–431–M

Virginia

Building

Army Reserve Center
Property #: 54199930010
1 West Church St.
Martinsville Co: Henry VA 24112–
Status: Excess
Comment: 12,225 sq. ft., 3 stories, most recent use—office, 2,250 sq. ft. leased to Postal Service
GSA Number: 4–D–VA–719

Washington

Building

Moses Lake U.S. Army Rsv Ctr
Property #: 21199630118
Grant County Airport
Moses Lake Co: Grant WA 98837–
Status: Surplus
Comment: 4499 sq. ft./2.86 acres, most recent use—admin., temporary permit from COE granted to an organization, FAA recommended land not be used for residential use due to aircraft noise problem, restriction
GSA Number: 9–D–WA–1141

Wisconsin

Building

Naval Reserve Center
Property #: 541999830002
215 South Eagle Street
Oshkosh Co: Winnebago WI 54903–
Status: Excess
Comment: 16,260 sq. ft., excellent condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–N–WI–596

Army Reserve Center
Property #: 54199940004
401 Fifth Street
Kewaunee Co: WI 54216–1838
Status: Excess
Comment: 2 admin. bldgs. (15,593 sq. ft.), 1 garage (1325 sq. ft.), need repairs
GSA Number: 1–D–WI–597

INTERIOR

Arizona

Land

Harry B. Christman Property
Property #: 61199910012
N. of Missile Base Road
Case No. 91–012
Marana Co: Pinal AZ 85245–
Status: Unutilized
Comment: 2.97 acres of vacant desert

Massachusetts

Building

Crowell Shed
Property #: 61199940010
Tract 41–8673
Chatham Co: Barnstable MA 02633–
Status: Unutilized
Comment: 120 sq. ft. storage shed, access via 4-wheel drive only over sand trail, off-site use only

Katz, Tract 17–2724
Property #: 61199940002
10 Old King's Highway
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 878 sq. ft., cement block, most recent use—residential, off-site use only

Carnelia, Tract 17–2725
Property #: 61199940003
12 Old King's Highway
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 1391 sq. ft., concrete block, most recent use—residential, off-site use only

Simons, Tract 17–2787
Property #: 61199940004
6 Head of Pamet Way
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 1600 sq. ft., most recent use—residential, off-site use only

Moss, Tract 17–2788
Property #: 61199940005
425 Ocean View Drive
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 2496 sq. ft. residence plus 2 outbuildings, off-site use only

Barracks 38, 39
Property #: 61199940006
Off Old Dew Line Road
Truro Co: Barnstable MA 02666–
Status: Unutilized
Comment: 5710 sq. ft., 2-story presence of asbestos, off-site use only

Gips, Tract 21–4837
Property #: 61199940007
188 Way #626
Wellfleet Co: Barnstable MA 02667–
Status: Unutilized
Comment: 2015 sq. ft., concrete block, most recent use—residential off-site use only

Weidlinger 19–4136
Property #: 61199940008
Valley Road
Wellfleet Co: Barnstable MA 02667–
Status: Unutilized
Comment: 1855 sq. ft., most recent use—residential, off-site use only

Mississippi

Building

Quarters 163
Property #: 61199910003
Natchez Trace Parkway
Ridgeland Co: Madison MS 39157–
Status: Excess
Comment: 1121 sq. ft., most recent use—residential, presence of asbestos, off-site use only

Quarters 183
Property #: 61199910004
Natchez Trace Parkway
Kosciusko Co: Attala MS 39090–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

Quarters 190
Property #: 61199910005
Natchez Trace Parkway
Port Gibson Co: Claiborne MS 39050–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

Quarters 194
Property #: 61199910006
Natchez Trace Parkway
Ackerman Co: Choctaw MS 39725–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

Quarters 258
Property #: 61199910007
Natchez Trace Parkway
Carlisle Co: Claiborne MS 39049–
Status: Excess
Comment: 1121 sq. ft., presence of absbestos, most recent use—residential, off-site use only.

New Mexico

Building

Roberts, Thomas A
Property #: 61199910017
#70, County Rd. 2900
Aztec Co: San Juan NM 87410–
Status: Excess
Comment: 2895 sq. ft., most recent use—residential, off-site use only.

Tennessee

Building

01–200
Property #: 61199910018
Stones River Natl
Battlefield
Murfreesboro Co: Rutherford TN 37129–
Status: Excess
Comment: 1596 sq. ft., most recent use—residential, off-site use only.

01–201
Property #: 61199910019
Stones River Natl
Battlefield
2042 Mansion Pike
Murfreesboro Co: Rutherford TN 37129–
Status: Excess
Comment: 3196 sq. ft., most recent use—residential, off-site use only.

Texas

Building

Tract 105–79
Property #: 61199910013
9047 Espada Rd,
San Antonio Co: Bexar TX 78214–
Status: Unutilized
Comment: 712 sq. ft., most recent use—residence, off-site use only.

NAVY

California

Building

Bldg. 105QA
Property #: 77199830002
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1000 sq. ft., needs repair, most recent use—water treatment facility, off-site use only.

Bldg. 102QA
Property #: 77199830003
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 6138 sq. ft., needs repair, most recent use—pro shop, off-site use only.

Bldg. 118QA
Property #: 77199830004
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 5635 sq. ft., needs repair, most recent use—coffee shop-grille, off-site use only.

Bldg. 119QA
Property #: 77199830005
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1277 sq. ft., needs repair, most recent use—lockers, off-site use only.

Bldg. 129QA
Property #: 77199830006
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 2832 sq. ft., needs repair, most recent use—patio cover, off-site use only.

Bldg. 140QA
Property #: 77199830007
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1648 sq. ft., needs repair, most recent use—golf cart battery shop, off-site use only.

Bldg. 176QA
Property: #: 77199830008
Naval Station, San Diego Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 5200 sq. ft., needs repair, most recent use—golf cart shelter, off-site use only.

Bldg. 193
Property: #77199830112
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 780 sq. ft., needs major repairs, most recent use—utility plant, off-site use only.

Bldg. 203
Property: #77199830113

Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 360 sq. ft., needs major repairs, most recent use—valve house, off-site use only.

Bldg. 228
Property: #77199830114
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 6142 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 286
Property: #77199830115
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 23,760 sq. ft., needs major repairs, most recent use—shop, off-site use only.

Bldg. 308
Property: #77199830116
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 3400 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 314
Property: #77199830117
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 160 sq. ft., most recent use—use—water treatment facility, off-site use only.

Bldg. 315
Property: #77199830118
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 160 sq. ft., needs major repairs, most recent use—water treatment facility, off-site use only.

Bldg. 335
Property: #77199830119
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 14,000 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 398
Property: #77199830120
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 1530 sq. ft., needs major repairs, most recent use—admin., off-site use only.

Bldg. 3201
Property: #77199830121
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 1750 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Connecticut

Building

Pier 7
Property: #77199710063
Naval Undersea Warfare Center
New London Co: New London CT 06320–5594
Status: Excess
Comment: 700′ long by 30′ wide, rectangular shaped reinforced concrete pier

Bldg. 84, Anx. of Gilmore Hall
Property: #77199830009
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 5400 sq. ft., 2-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 150, McNeil Hall
Property: #: 77199830010
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 27,120 sq. ft., 4-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 437, Fife Hall
Property: #77199830011
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 51,790 sq. ft., 3-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 295
Property: #77199830012
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: presence of asbestos/lead paint, needs rehab, off-site use only.

Facility CH–901
Property #: 77199830045
Naval Submarine Base
Co: New London CT
Status: Excess
Comment: 6161 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—community center, off-site use only.

3 Bldgs
Property #: 77199910019
Naval Submarine Base
R121444, R121458, R121469
Ledyard Co: New London CT 06335–
Status: Unutilized
Comment: Various sq. ft., wood, possible asbestos/lead paint, most recent use—storage, off-site use only.

DG–12, DG–14, DG28–DG46
Property #: 77199930026
Naval Submarine Base New London
Gorton Co: New London CT 06349–
Status: Unutilized
Comment: 19 detached garages, off-site use only.

Hawaii

Building

Bldg. S87, Radio Trans. Facility
Property #: 77199240011
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans. Facility
Property #: 77199310004
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Status: Unutilized
Comment: 3612 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 442
Property #: 77199630088
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only.

Bldg. S180
Property #: 77199640039
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. S181
Property #: 77199640040
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 4248 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. 219
Property #: 77199640041
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 220
Property #: 77199640042
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 160
Property #: 77199840002
Naval Station, Pear Harbor
Pearl Harbor Co: Honolulu HI 96860–
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only.

Facility No. 92
Property #: 77199930076
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 1008 sq. ft., needs rehab, most recent use—storage, off-site use only.

Facility No. 99
Property #: 77199930077
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 544 sq. ft., concrete, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Facility No. 127
Property #: 77199930078
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess

Comment: 198 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.
Facility No. 227
Property #: 77199930079
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 2240 sq. ft., needs rehab, presence of asbestos, most recent use—weight room, off-site use only.
Facility No. 285
Property #: 77199930080
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Status: Excess
Comment: 418 sq. ft., needs rehab, most recent use—storage, off-site use only.
Bldg. 5175
Property #: 77199940033
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.
Bldg. 5179
Property #: 77199940034
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.
Bldg. 5183
Property #: 77199940035
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.
Bldg. 5187
Property #: 77199940036
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.
Bldg. 5191
Property #: 77199940037
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96705–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.
Bldg. 5193
Property #: 77199940038
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only.

Maine

Building

Bldg. 22
Property #: 77199840008
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 2687 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 36
Property #: 77199840009
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 8840 sq. ft., most recent use—storage, off-site use only.
Bldg. 38
Property #: 77199840010
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 19,612 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.
Bldg. 234
Property #: 77199840011
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 768 sq. ft., presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.
Bldg. 4
Property #: 77199930005
Naval Air Station
Brunswick Co: 04011–
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only.
Bldg. 8
Property #: 77199930006
Naval Air Station
Brunswick Co: ME 04011–
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only.
Bldg. 12
Property #: 77199930007
Naval Air Station
Brunswick Co: ME 04011–
Status: Excess
Comment: 25,353 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 41
Property #: 77199930008
Naval Air Station
Brunswick Co: ME 04011–
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only.
Bldg. 224
Property #: 77199930009
Naval Air Station
Brunswick Co: Me 04011–
Status: Excess
Comment: 8000 sq. ft., presence of asbestos/lead paint, most recent use—thrift shop, off-site use only.
Bldg. 6
Property #: 77199940039
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1973 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 9
Property #: 77199940040
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 8888 sq. ft., presence of asbestos/lead paint, most recent use—housing office, off-site use only.
Bldg. 28
Property #: 77199940041
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 784 sq. ft., presence of asbestos/lead paint, most recent use—liquid oxygen bldg., off-site use only.
Bldg. 48
Property #: 77199940042
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 3260 sq. ft., presence of asbestos/lead paint, most recent use—carpenter shop, off-site use only.
Bldg. 51
Property #: 77199940043
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1870 sq. ft., presence of asbestos/lead paint, most recent use—paint shop, off-site use only.
Bldg. 73
Property #: 77199940044
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 64 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 74
Property #: 77199940045
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 3072 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 75
Property #: 77199940046
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 332 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 88
Property #: 77199940047
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1462 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 94
Property #: 77199940048
NAS Brunswick

Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 64 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 209
Property #: 77199940049
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—union bldg., off-site use only.

Bldg. 233
Property #: 77199940050
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 24,048 sq. ft., presence of asbestos/lead paint, most recent use—heating plant, off-site use only.

Bldg. 1157
Property #: 77199940051
NAS Brunswick
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 1474 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

New Hampshire

Building

Bldg. 246
Property #: 77199820028
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: metal frame structure, off-site use only.

Bldg. 335
Property #: 77199820029
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: 1000 sq. ft., brick, off-site use only.

Bldg. 128
Property #: 77199830015
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 185
Property #: 77199830016
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 314
Property #: 77199830017
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 336
Property #: 77199830018
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only.

Bldg. H–2
Property #: 77199910044
Portsmouth Naval Shipyard
Portsmouth NH Co: 03804–5000
Status: Unutilized
Comment: 1103 sq. ft., possible asbestos, off-site use only.

Bldg. IY44
Property #: 77199910045
Portsmouth Naval Shipyard
Portsmouth NH Co: 03804–5000
Status: Unutilized
Comment: 1100 sq. ft., possible asbestos, most recent use—small arms magazine, off-site use only.

Bldg. 160
Property #: 77199910046
Portsmouth Naval Shipyard
Portsmouth NH Co: 03804–5000
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. 97
Property #: 77199920064
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: 573 sq. ft., most recent use—scale house/storage, off-site use only.

New Jersey

Building

Naval Reserve Center
Property #: 77199930038
53 Hackensack Ave.
Kearny Co: Hudson NJ 07302–
Status: Excess
Comment: 12,180 sq. ft., minor repairs needed on 2.63 acres, most recent use—office.

Bldg. D1–A
Property #: 77199940024
Naval Weapons Station
Colts Neck Co: NJ 07722–
Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only.

Bldg. HA–1A
Property #: 77199940025
Naval Weapons Station
Colts Neck Co: NJ 07722–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only.

New York

Building

101 Housing Units
Property #: 77199810093
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Status: Unutilized
Comment: 422 sq. ft., frame 2-story, presence of asbestos/lead paint, most recent use—residential, off-site use only.

36 Garages
Property #: 77199810094
Mitchel Complex
East Meadow Co: Nassau NY 11554–
Status: Unutilized
Comment: 350 sq. ft., masonary, most recent use—garage, off-site use only.

Naval Reserve Center
Property #: 77199840017
201 Third Avenue
Frankfort NY 13340–1419
Status: Unutilized
Comment: 10,000 sq. ft., most recent use—training facility.

Pennsylvania

Building

Bldg. 76
Property #: 77199730075
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only.

Bldg. 44
Property #: 77199830093
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2154 sq. ft., needs repair, presence of asbestos, most recent use—medical clinic, off-site use only.

Bldg. 48
Property #: 77199830094
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2737 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 49
Property #: 77199830095
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 3263 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 64
Property #: 77199830096
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 3157 sq. ft., needs major repairs, presence of asbestos, most recent use—office, off-site use only

Bldg. 65 U/V
Property #: 77199830097
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 4829 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only

Bldg. 133
Property #: 77199830098
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 27,600 sq. ft., needs repairs, presence of asbestos, most recent use—admin., off-site use only

Bldg. 337
Property #: 77199830099
Philadelphia Naval Shipyard

Philadelphia PA 19112–
Status: Excess
Comment: 1025 sq. ft., needs major repairs, presence of asbestos, most recent use—garage, off-site use only

Bldg. 418
Property #: 77199830100
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2578 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only

Bldg. 570
Property #: 77199830101
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Unutilized
Comment: 9123 sq. ft., needs repair, presence of asbestos, most recent use—tool room, off-site use only

Bldg. 605
Property #: 77199830102
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 1118 sq. ft., needs repair, presence of asbestos, most recent use—garage, off-site use only

Rhode Island

Building

Bldg. 69
Property #: 77199810052
Naval Education and Training Center
Newport Co: Newport RI 02841–
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only

Bldg. A33
Property #: 77199810083
Navy Hospital Gate 5
Newport RI 02841–
Status: Underutilized
Comment: 1512 sq. ft., detached 5 stall garage, needs repair, presence of asbestos, off-site use only

Facility T
Property #: 77199810175
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1610 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Facility U
Property #: 77199810176
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility V
Property #: 77199810177
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility W
Property #: 77199810178
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training/office, off-site use only

Facility X
Property #: 77199810179
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Facility Y
Property #: 77199810180
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin., off-site use only

Facility 322
Property #: 77199810181
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 323
Property: #77199810182
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—. shop, off-site use only

Facility 324
Property #: 77199810183
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 325
Property #: 77199810184
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Facility 326
Property #: 771998101825
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Facility 327
Property #: 77199810186
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. 342
Property #: 77199810259
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 646 sq. ft., presence of asbestos/lead paint, most recent use— storage, off-site use only

Bldg. 340
Property #: 77199810260
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 96 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—heating plant bldg., off-site use only

Bldg. 697
Property #: 77199810262
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use— self help shop, off-site use only

Bldg. 696
Property #: 77199810263
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use— elec/comm maint. shop, off-site use only

Bldg. 35
Property #: 77199810264
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Status: Unutilized
Comment: 2880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—auto storage, off-site use only

Bldg. 70
Property #: 77199840018
Naval Station, Newport
Middletown Co: Newport RI 02842–
Status: Unutilized
Comment: 1900 sq. ft., most recent use—storage, off-site use only

Bldg. 111
Property #: 77199840019
Naval Station, Newport
Middletown Co: Newport RI 02842–
Status: Unutilized
Comment: 560 sq. ft., most recent use—storage, off-site use only

Facility 700
Property #: 77199840029
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 6230 sq. ft., most recent use—wastewater treatment plant, off-site use only

Facility 994
Property #: 77199840030
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Facility 449
Property #: 77199840031
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 140 sq. ft., most recent use—chlorination shed, off-site use only

Facility 1324
Property#: 77199840032
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 107 sq. ft., most recent use— lift station controls shed, off-site use only

Bldg. 118
Property #: 77199920065
Naval Undersea Warfare
Center
Middletown Co: Newport RI 02841–1708
Status: Excess
Comment: 1604 sq. ft., presence of asbestos/lead paint, most recent use—offices/storage, off-site use only

Bldg. 136
Property #: 77199920066
Naval Undersea Warfare
Center
Middletown Co: Newport RI 02841–1708
Status: Excess
Comment: 882 sq. ft., presence of asbestos/lead paint, most recent use—operations office, off-site use only

Virginia

Building

Bldg. SP–63A
Property #: 77199910017
Naval Base Norfolk
Norfolk Co: VA 23511–
Status: Excess
Comment: 480 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. SP–63
Property #: 77199910018
Naval Base Norfolk
Norfolk Co: VA 23511–
Status: Excess
Comment: 1632 sq. ft., presence of asbestos, off-site use only

Bldg. MCE223
Property #: 77199910053
Norfolk Co: VA 23511–2895
Status: Excess
Comment: 256 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. MCE221
Property #: 77199910054
Naval Station Norfolk
Norfolk Co: VA 23511–2895
Status: Excess
Comment: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Structure NH–201
Property #: 77199920149
Atlantic Fleet Hdgts.
Support Activity
Norfolk Co: VA 23511–
Status: Excess
Comment: 4922 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Structure NH–203
Property #: 77199920150
Atlantic Fleet Hdgts.
Support Activity
Norfolk Co: VA 23511–
Status: Excess
Comment: 1874 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only

Structure NH–213
Property #: 77199920151
Atlantic Fleet Hdgts.
Support Activity
Norfolk Co: VA 23511–
Status: Excess
Comment: 7840 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Washington

Building

149 Duplexes
Property #: 771999820118
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

9 Fourplexes
Property #: 771999820119
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

2 Sixplexes
Property #: 77199820120
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

1 Single Unit
Property #: 77199820121
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

Storage Building
Property #: 77199820122
Navay Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storge, off-site use only

Admin. Building, Structure 001
Property #:77199820123
Naval Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

VA

Alabama

Land

VA Medical Center (VAMC)
Property #: 97199010053
Tuskegee Co: Macon AL 36083–
Status: Underutilized
Comment: 40 acres, buffer to VA medical Center, potential utilities, undeveloped.

California

Land

Land
Property #: 97199240001
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Status: Underutilized
Comment: 4 acres; landslide area.

Indiana

Building

Bldg. 105, VAMC
Property #: 97199230006
East 38th Street
Marion Co: Grant IN 46952–
Status: Excess
Comment: 310 sq. ft., 1 story stone structure no sanitary or heating facilities, Natl Register of Historic Places.

Bldg. 140, VAMC
Property #: 97199230007
East 38th Street
Marion Co: Grant IN 46952–
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house.

Bldg. 7
Property #: 97199810001
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use— psychiatric ward, National Register of Historic Places.

Bldg. 10
Property #: 97199810002
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic places.

Bldg. 11

Property #: 97199810003
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 18
Property #: 97199810004
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 25
Property #: 97199810005
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Iowa

Land

40.66 acres
Property #: 97199740002
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Status: Unutilized
Comment: Golf course, easement requirements.

Maryland

Land

VA Medical Center
Property #: 97199010020
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Pennsylvania

Building

Bldg. 25, VA Medical Center
Property #: 97199210001
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Status: Unutilized
Comment: 133 sq. ft., one story bick guard house, needs rehab.

Bldg. 3, VAMC
Property #: 97199230012
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Status: Underutilized
Comment: Portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage; second floor lacks elevator access.

Texas

Land

Land
Property #: 97199010079
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Wisconsin

Building

Bldg. 8
Property #: 97199010056
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land

VA Medical Center
Property #: 97199010054
County Highway E
Tomah Co: Monroe WI 54660–
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

SUITABLE AND UNAVAILABLE

AIR FORCE

Colorado

Building

Bldg. 9023
Property #: 18199730010
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Status: Underutilized
Reason: Utilized.

Bldg. 9027
Property #: 18199730011
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Status: Underutilized
Reason: Utilized.

Idaho

Building

Bldg. 224
Property #: 18199840008
Mountain Home Air Force Co: Elmore ID 83648–
Status: Unutilized
Reason: Extension of runway.

Iowa

Building

Bldg. 00627
Property #: 18199310001
Siox Gateway Airport
Siox City Co: Woodbury IA 51110–
Status: Unutilized
Reason: Will be transferred to Siox City.

Bldg. 00669
Property #: 18199310002
Siox Gateway Airport
Siox City Co: Woodbury IA 51110–
Status: Unutilized
Reason: Will be transferred to Siox City.

Michigan

Building

Bldg. 50
Property #: 18199010790
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 14
Property #: 18199010833
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 16
Property #: 18199010834
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 15
Property #: 18199010864
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Nebraska

Building

Bldg. 64
Property #: 18199720040
Offutt AFB
Silver Creek Co: Nance NE 68663–
Status: Unutilized
Reason: Utilized.

Land

Land/Offutt Comm. Annex No. 4
Property #: 18199720041
Silver Creek Co: Nance NE 68113–
Status: Unutilized
Reason: Asbestos in underground bunker.

New Hampshire

Building

Bldg. 127
Property #: 18199320057
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.

New Mexico

Building

16 Bldgs., Type A
Property #: 18199910013
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

12 Bldgs., Type B
Property #: 18199910014
Kirtland AFB
Duplex Houses
Kirkland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

15 Bldgs., Type C
Property #: 18199910015
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

6 Bldgs., Type D
Property #: 18199910016
Kirtland AFB

Duplex Houses
Kirtland AFB Co: Bernalillo NM 87717–5000
Status: Unutilized
Reason: Under demolition.

9 Bldgs., Type E
Property #: 18199910017
Kirtland AFB
Single Units
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

12 Bldgs.
Property #: 18199940006
Kirtland AFB
#862–867, 869, 870, 873–876
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

Bldgs. 871, 872
Property #: 18199940007
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5000
Status: Unutilized
Reason: Under demolition.

ARMY

Alaska

Building

Bldg. 806
Property #: 21199930115
Fort Richardson
Ft. Richardson Co AK 99505–
Status: Excess
Reason: Fully utilized.

Georgia

Building

Bldg. 4090
Property #: 21199930007
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Underutilized
Reason: Plan to utilize as a museum.

Kansas

Building

Bldg. P–295
Property #: 21199810296
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Reason: Reutilized.

New York

Building

Bldg. T–2215
Property #: 21199840161
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Reason: Reutilization.
Bldg. T–2216
Property #: 21199840162
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Reason: Reutilization.

North Carolina

Land

92 Acre—Land
Property #: 21199610728
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Contains well owned by Town; within an explosive buffer zone.

10 Acre—Land
Property #: 21199610729
Militry Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Within an explosives buffer zone.

257 Acre—Land
Property #: 21199610730
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Within an explosvies buffer zone.

24.83 acres—Tract of Land
Property #: 21199620685
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Explosive Buffer Zone.

Texas

Building

Bldg. P–2000, Fort Sam Houston
Property #: 21199220389
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. P–2001, Fort Sam Houston
Property #: 21199220390
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Land

Vacant Land, Fort Sam Houston
Property #: 21199220438
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000.
Status: Unutilized
Reason: Clean-up process.

COE

California

Building

Santa Fe Flood Control Basin
Property #: 31199011298
Irwindale Co: Los Angeles CA 91706–
Status: Unutilized
Reason: Needed for contract personnel.

Illinois

Buildings

Bldg.7
Property #: 31199010001
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 6
Property #: 31199010002
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 5
Property #: 31199010003
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 4
Property #: 31199010004
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 3
Property #: 31199010005
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 2
Property #: 31199010006
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 1
Property #: 31199010007
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Land

Lake Shelbyville
Property #: 31199240004
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Status: Unutilized
Reason: Disposal action initiated.

Kentucky

Land

Portion of Tract 3300
Property #: 31199830002
Fishtrap Lake
Co: Pike KY 41548–
Status: Excess
Reason: Encroachment.

Ohio

Building

Bldg.—Berlin Lake
Property #: 31199640001
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Status: Unutilized
Reason: Utilized as construction office.

Oklahoma

Land

Land
Property #: 31199820002
Lake Texoma
Texoma Co: Bryan OK
Status: Excess
Reason: To be conveyed to Rural Sewer District.

Pennsylvania

Building

Tract 353
Property #: 31199430019
Grays Landing Lock & Dam Project

Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403A
Property #: 31199430021
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403B
Property #: 31199430022
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403C
Property #: 31199430023
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 434
Property #: 31199430024
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract No. 224
Property #: 31199440001
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Status: Unutilized
Reason: Disposal action initiated.

Land

East Branch Clarion River Lake
Property #: 31199011012
Wilcox Co: Elk PA
Status: Underutilized
Reason: Location near damsite.

Dashields Locks and Dam (Glenwillard, PA)
Property #: 31199210009
Crescent Twp. Co: Allegheny PA 15046–0475
Status: Unutilized
Reason: Leased to Township.

Texas

Land

Parcel #222
Property #: 31199010421
Lake Texoma
Co: Grayson TX
Status: Excess
Reason: Landfill to be investigated.

Wisconsin

Building

Former Lockmaster's Dwelling
Property #: 31199011526
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Status: Unutilized
Reason: In negotiation for transfer to the State.

DOT

Alaska

Building

Bldgs. 001A&B
Property #: 87199720001
Spruce Cape Loran Station
Kodiak Co: Kodiak Is. Bor. AK 99615–
Status: Excess
Reason: Currently utilized by Navy.

Georgia

Land

Land—St. Simons Boathouse
Property #: 87199540003
St. Simons Island Co: Glynn GA 31522–0577
Status: Unutilized
Reason: Reversionary clause in deed.

Maine

Building

Mount Desert Rock Light
Property #: 87199240023
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Status: Unutilzied
Reason: No electrical service.

Little River Light
Property #: 87199240026
U.S. Cost Guard
Cutler Co: Washington ME
Status: Unutilized
Reason: Well contamination.

Burnt Island Light
Property #: 87199240027
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Status: Unutilized
Reason: Under a historic lease.

Massachusetts

Building

Keepers Dwelling
Property #: 87199240024
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Status: Unutilized
Reason: Under a license agreement.

Assistant Keepers Dwelling
Property #: 871992400025
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Status: Unutilized
Reason: Under a license agreement.

ENERGY

Idaho

Building

Bldg. CFA–613
Property #: 41199630001
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Status: Unutilized
Reason: Historical issues.

GSA

Alaska

Building

10 Office Buildings
Property #: 54199710002
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

3 Stoage Buildings
Property #: 541999710003
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

1 Hospital
Property #: 54199710004
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

California

Building

112 Bldgs.—Skaggs Island
Property #: 54199730001
Naval Security Group
Skaggs Island Co: Sonoma CA
GSA Number: 9–N–CA–1488
Status: Excess
Reason: Public benefit interest.

Marine Culture Laboratory
Property #: 54199830011
Granite Canyon
34500 Coast Highway
Monterey CA 93940–
Status: Surplus
GSA Number: 9–C–CA–1499
Reason: Wildlife Conservation.

Natl Weather Svc Station
Property #: 54199840007
Blue Canyon Airport
Emigrant Gap CA 95715–
Status: Surplus
GSA Number: 9–C–CA–1521
Reason: Advertised.

Naval & Marine Corps Readiness
Property #: 54199910005
1700 Stadium Way
Los Angeles Co: Los Angeles CA 90012–
Status: Excess
GSA Number: 9–N–CA–1523
Reason: Emergency Service pending.

Eureka Federal Building
Property #: 54199930024
5th & H Streets
Eureka Co: CA 95501–
Status: Excess
GSA Number: 9–G–CA–1529
Reason: Federal need.

Land

Mira Loma Parcel
Property #: 54199910007
March Comm. Annex No. 2
Mira Loma Co: Riverside CA
Status: Excess
GSA Number: 9–G–CA–1505
Reason: Advertised.

Reclamation Unit LC–2, Par. B
Property #: 54199910008
Texas Ave/Old Lewiston Rd
Lewiston Co: Trinity CA
Status: Excess
GSA Number: 9–I–CA–1509
Reason: Advertised.

Redding Reserve Site
Property #: 54199920001
Redding Co: Shasta CA 96049–
Status: Unutilized

GSA Number: 9–D–CA–1524
Reason: City interest.

Delaware

Building

Unaccompanied Pers. Housing
Property #: 54199840009
800 Inlet Road
Rehoboth Beach Co: Sussex DE 19971–2698
Status: Excess
GSA Number: 4–U–DE–462
Reason: Park Interest.

Georgia

Building

Phil Landrum Federal Bldg.
Property #: 54199810008
35 W. Church Street
Jasper Co: Pickens GA 30143–
Status: Surplus
GSA Number: 4–G–GA–854
Reason: Public benefit interest.

Federal Building
Property #: 54199910014
109 N. Main Street
Lafayette Co: Walker GA 30728–
Status: Excess
GSA Number: 4–G–GA–858
Reason: Homeless interest.

Illinois

Building

Radar Communication Link
Property #: 54199820013
½ mi east of 116th St.
Co: Will IL
Status: Excess
GSA Number: 2–U–IL–696
Reason: negotiated sale.

Natl Weather Svc. Meter. Obs.
Property #: 54199820014
Morris Blacktop Rd.
Miller Township Co: LaSalle IL 61341–
Status: Excess
GSA Number: 1–C–IL–708
Reason: homeless interest

Indiana

Building

Vincennes Federal Building
Property #: 54199820015
501 Busseron St.
Vincennes Co: Knox IN 47591–
Status: Excess
GSA Number: 1–G–IN–592
Reason: Historic Interest.

Former Army Reserve Center
Property #: 54199920003
White Oak Park
LaPorte Co: LaPorte IN 00000–
Status: Excess
GSA Number: 1–GR(1)–IN–430E
Reason: Advertised.

Maine

Land

GWEN Site (Patten)
Property #: 18199640018
Loring AFB
Stacyville Co: Herseytown ME 04742–
Status: Excess
GSA Number: 1–D–ME–630
Reason: Advertised.

Maryland

Building

Cheltenham Naval Comm. Dtchmt.
Property #: 77199330010
9190 Commo Rd., AKA 77000
Redman Rd.
Clinton Co: Prince George MD 20397–5520
Status: Excess
GSA Number: 4–N–MD–544A
Reason: Public benefit interest.

Michigan

Building

Detroit Job Corps Center
Property #: 54199510002
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit Co: Wayne MI 42128–
Status: Surplus
GSA Number: 2–L–MI–757
Reason: Education application.

Parcel #1
Property #: 54199730011
Old Lifeboat Station
East Tawas Co: Iosco MI
Status: Excess
GSA Number: 1–UU–MI–500
Reason: Advertised.

S. Haven Keeper's Dwelling
Property #: 54199740012
91 Michigan Ave.
South Haven Co: Van Buren MI 49090–
Status: Excess
GSA Number: 1–U–MI–475C
Reason: Negotiated sale to City.

Land

Parcel 3, Parcel B
Property #: 54199730013
East Tawas Co: Iosco MI
Status: Excess
GSA Number: 1–U–MI–500
Reason: Negotiated sale.

Minnesota

Building

Army Reserve Center
Property #: 54199920007
620 Turill St.
Le Sueur Co: MN 56058–
Status: Excess
GSA Number: 1–D–MN–568
Reason: Homeless interest.

Mississippi

Building

Federal Building
Property #: 54199910004
236 Sharkey Street
Clarksdale Co: Coahoma MS 38614–
Status: Excess
GSA Number: 4–G–MS–553
Reason: Will be leased back to Federal tenants.

New York

Building

Reserve Center
Property #: 21199710239
Sgt. H. Grover H. O'Connor
USARC
303 N. Lackawanna Street
Wayland Co: Steuben NY 14572–
Status: Unutilized
GSA Number: 1–D–NY–866
Reason: Advertised.

Land

Galeville Army Training Site
Property #: 21199510128
Shawangunk Co: Ulster NY 12589–
Status: Excess
GSA Number: 2–D–NY–807
Reason: Park application.

North Carolina

Building

Federal Building
Property #: 54199730022
146 North Main Street
Rutherfordton Co: Rutherford NC 28139–
Status: Excess
GSA Number: 4–G–NC–727
Reason: Homeless interest.

Tarheel Army Missile Plant
Property #: 54199820002
Burlington Co: Alamance NC 27215–
Status: Excess
GSA Number: 4–D–NC–593
Reason: Advertised.

Coinjock Station
Property #: 54199840010
Canal Road
Coinjock Co: Currituck NC 27293–
Status: Excess
GSA Number: 4–U–NC–734
Reason: Homeless Interest.

Bodie Island Lighttower
Property #: 54199910003
Cape Hatteras
Nags Head Co: Dare NC 27959–
Status: Excess
GSA Number: 4–U–NC–733
Reason: Expression of interest from National Park Service.

Land

Greenville Relay Station
Property #: 54199840013
Site C
Greenville Co: Pitt NC
Status: Excess
GSA Number: 4–GR–NC–0721–B
Reason: Education Interest.

Ohio

Building

Zanesville Federal Building
Property #: 54199520018
65 North Fifth Street
Zanesville Co: Muskingum OH
Status: Excess
GSA Number: 2–G–OH–781A
Reason: Public benefit interest from County.

Oklahoma

Building

Fed. Bldg./Courthouse
Property #: 54199820009
N. Washington & Broadway Streets
Ardmore Co: Carter OK 73402–
Status: Excess
GSA Number: 7–G–TX–559
Reason: Federal need.

Oregon

Building

Gus Solomon U.S. Courthouse

Property #: 54199730023
620 SW Main Street
Portland Co: Multnomah OR 97205–
Status: Underutilized
GSA Number: 7–G–OR–724
Reason: Pending lease with County government.

Puerto Rico

Land

La Hueca—Naval Station
Property #: 54199420006
Roosevelt Roads
Vieques PR 00765–
Status: Excess
Reason: Federal interest.

Texas

Building

Fairfield Federal Building
Property #: 54199920006
E. Main & Keechi St.
Fairfield Co: Freestone TX 75840–1556
Status: Excess
GSA Number: 7–G–TX–1051
Reason: Correctional interest.

Washington

Building

Vancouver Info Center
Interstate Rt 5
Property #: 541999740011
Vancouver Co: Clark WA 98663–
Status: Excess
GSA Number: 9–GR–WA–514E
Reason: Homeless interest.

747 Building Complex
805 Goethals Drive
Property #: 54199820005
Richland Co: Benton WA 99352–
Status: Surplus
GSA Number: 9–B–WA–1145
Reason: Educational discount.

West Virginia

Land

Segment 8
Property #: 54199910006
Matewan Redevelopment Site
Matewan Co: Mingo WV
Status: Excess
GSA Number: 4–D–WV–533
Reason: Written expression of interest.

Wisconsin

Building

Wausau Federal Building
Property #: 54199820016
317 First Street
Wausau Co: Marathon WI 54401–
Status: Excess
GSA Number: 1–G–WI–593
Reason: Public Benefit Interest.

Interior

California

Building

Visitor Motel—Upper Kaweah
Property #: 61199720007
Sequoia National Park
Three Rivers CA 93271–
Status: Unutilized
Reason: Scheduled for demolition.

Maryland

Building

Former Physioc Property
Property #: 61199820005
NPS Tract 402–29
Jugtown Co: Washington MD 21713–
Status: Excess
Reason: Scheduled for demolition.

Massachusetts

Building

Ziegler House
Property #: 61199830001
National Park, Virginia Road
Lincoln Co: Middlesex MA 10773–
Status: Unutilized
Reason: Removal by FNP to eliminate damage to historic/natural rsc.

Navy

Florida

Land

13.358 acres
Property #: 77199820141
Naval Air Station
Hwy 98 & Perimeter Drive
Pensacola Co: Escambia FL 32508–
Status: Unutilized
Reason: Federal Aid Project.

Maine

Building

Bldg. 376, Naval Air Station
Property #: 77199320011
Topsham Annex
Topsham Co: Sagadahoc ME
Status: Unutilized
Reason: Federal need.

Bldg. 383
Property #: 77199720025
Topsham Annex, Naval Air Station
Status: Unutilized
Reason: Pending special legislation.

Bldg. 382
Property #: 77199720026
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Bldg. 381
Property 99720027
Topsham Annex, Naval Air Station
Property #: 77199720027
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Ohio

Building

Naval & Marine Corps Res. Cntr
Property #: 77199320012
315 East LaClede Avenue
Youngstown OH
Status: Unutilized
Reason: Returning property to the city.

Puerto Rico

Building

Bldgs. 501 & 502
Property #: 77199530007
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Status: Underutilized
Reason: Department of Defense interest.

Virginia

Building

Naval Medical Clinic
Property #: 77199010109
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Status: Unutilized
Reason: Planned for expansion space.

Land

Naval Base
Property #: 77199010156
Norfolk Co: Norfolk VA 23508–
Status: Unutilized
Reason: Identified for use in developing admin. office space.

Land—CD area
Property #: 77199830022
Naval Base Norfolk
Norfolk VA 23511–2797
Status: Unutilized
Reason: outlease to Federal Credit Union.

VA

Indiana

Building

Bldg. 24, VAMC
Property #: 97199230005
East 38th Street
Marion Co: Grant IN 46952–
Status: Underutilized
Reason: Currently utilized

Bldg. 122
Property #: 97199810006
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Unutilized
Reason: Fully utilized by construction contractor.

Iowa

Land

38 acres
Property #: 97199740001
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Status: Unutilized
Reason: Enhanced-Use Legislation potential.

Michigan

Land

VA Medical Center
Property #: 97199010015
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Status: Underutilized
Reason: Being used for patient and program activities.

New York

Land

VA Medical Center
Property #: 97199010017
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Status: Underutilized
Reason: Portion leased; portion landlocked.

Pennsylvania

Land

VA Medical Center
Property #: 97199010016
New Castle Road
Butler Co: Butler PA 16001–
Status: Underutilized
Reason: Used as natural drainage for facility property.

Land No. 645
Property #: 97199010080
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Status: Unutilized
Reason: Property is essential to security and safety of patients.

Land—34.16 acres
Property #: 97199340001
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Status: Underutilized
Reason: Needed for mission related functions.

Tennessee

Land

44 acres
Property #: 97199740003
VA Medical Center
3400 Lebanon Rd.
Murfreesboro Co: Rutherford TN 37129–
Status: Underutilized
Reason: Enhanced-Use lease agreement pending.

Wisconsin

Building

Bldg. 2
Property #: 97199830002
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Status: Underutilized
Reason: Subject of leasing negotiations.

[FR Doc. 00–2892 Filed 2–10–00; 8:45 am]

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February 11, 2000

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560, and 2570

Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers; Interim Final Rule

The Assessment of Civil Penalties Under Section 502(c)(5) of ERISA; Interim Final Rule

Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA; Interim Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA54

Interim Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule governing certain reporting requirements under Title I of the Employee Retirement Income Security Act of 1974 for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide coverage for medical care to the employees of two or more employers. The interim final rule requires the administrator of a MEWA, or other entity, to file a form with the Secretary of Labor for the purpose of determining whether the requirements of certain recent health care laws are being met.

DATES: Effective Date: This interim final rule is effective beginning April 11, 2000.

Comment Date: Written comments concerning this interim rule are invited and must be received by the Department of Labor on or before March 13, 2000.

Compliance Dates: Compliance dates are set forth in paragraph (i) of this section. In general, this paragraph states that reports filed pursuant to this interim rule are first due by May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: MEWArpt@pwba.dol.gov.

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), was enacted on August 21, 1996. HIPAA amended the Employee Retirement Income Security Act of 1974 (ERISA or the Act) to provide for, among other things, improved portability and continuity of health insurance coverage. The Mental Health Parity Act of 1996 (Pub. L. 104–204) (MHPA), was enacted on September 26, 1996. MHPA amended ERISA to provide parity in the application of annual and lifetime dollar limits for certain mental health benefits with such dollar limits on medical and surgical benefits. The Newborns' and Mothers' Health Protection Act of 1996 (Pub. L. 104–204) (Newborns' Act) also was enacted on September 26, 1996. The Newborns' Act amended ERISA to provide new protections for mothers and their newborn children with regard to the length of hospital stays in connection with childbirth. The Women's Health and Cancer Rights Act of 1998 (WHCRA) (Pub. L. 105–277) was enacted on October 21, 1998. WHCRA amended ERISA to provide individuals new rights for reconstructive surgery in connection with a mastectomy. All of the foregoing provisions are set forth in Part 7 of Subtitle B of Title I of ERISA.[1] Section 734 of ERISA authorizes the Secretary to promulgate regulations as may be necessary or appropriate to carry out the provisions of Part 7 and to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7.

HIPAA added a new section 101(g){h} to ERISA.[2] This section provides that:

> the Secretary [of Labor] may, by regulation, require *multiple employer welfare arrangements* providing benefits consisting of medical care (within the meaning of section 733(a)(2))[3] which are not group health plans[4] to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 are being carried out in connection with such benefits. (Emphasis added.)

The term *multiple employer welfare arrangement* is defined in section 3(40) of ERISA to mean, in pertinent part:

> (A) * * * an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—
>
> (i) Under or pursuant to one or more agreements which the Secretary [of Labor] finds to be collective bargaining agreements,
>
> (ii) By a rural electric cooperative, or
>
> (iii) By a rural telephone cooperative association.
>
> (B) For purposes of this paragraph—
>
> (i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,
>
> (ii) the term ''control group'' means a group of trades or businesses under common control,
>
> (iii) the determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in

[1] Parallel HIPAA, MHPA, and Newborns' Act provisions are also contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). In addition, parallel WHCRA provisions are also contained in the PHS Act. Accordingly, all references to ''Part 7'' in this document include the relevant parallel provisions of the Code and the PHS Act, unless otherwise specified.

[2] Section 1421(d)(1) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) created a new section 101(g) of ERISA relating to Simple Retirement Accounts. Subsequently, section 101(e)(1) of HIPAA also created a new section 101(g) of ERISA relating to MEWA reporting. Accordingly, when referring to section 101(g) of ERISA relating to MEWA reporting, this document cites section 101(g){h} of ERISA.

[3] Section 733(a)(2) of ERISA defines *medical care* to mean:

''amounts paid for—

(A) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) Amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) Amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).''

[4] Section 733(a) of ERISA defines a *group health plan* to mean ''an *employee welfare benefit plan* to the extent that the plan provides medical care * * * to employees or their dependents * * * directly or through insurance, reimbursement, or otherwise.'' (Emphasis added.)

Section 3(1) of ERISA defines *an employee welfare benefit plan* to mean, in pertinent part:

Any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, * * * medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services. * * *''

determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent. * * * [5]

The purpose of this regulation is to provide the Department with information concerning compliance by MEWAs with the requirements of Part 7. In determining how best to obtain this information, the Department considered a number of alternatives, including requiring reporting only by MEWAs that are not ERISA-covered group health plans as described in section 101(g){h} of ERISA. For a number of reasons, explained more fully in the Economic Analysis section of this document, the Department determined that it was necessary to exercise various other regulatory authority in Title I of ERISA (see ''Statutory Authority'' section, below) to require annual reports from MEWAs that are group health plans and from entities that claim not to be MEWAs because they are established or maintained pursuant to a collective bargaining agreement. An important reason for requiring these groups to file is that the administrator of a MEWA may incorrectly determine that it is a group health plan or that it is established or maintained pursuant to a collective bargaining agreement. A reporting requirement limited only to MEWAs that are not group health plans may not result in reporting by many such MEWAs, thus greatly reducing the value of the data collected.

The Department also believes that imposition of the reporting requirements on MEWAs that are group health plans is appropriate to carry out the provisions of Part 7 because such reporting will provide more complete data on the MEWA universe. Such additional data will support a thorough analysis of the market segment represented by MEWAs. Information regarding compliance by MEWAs with the provisions of Part 7 is particularly important to the Department because it has been the Department's experience that compliance with ERISA by such arrangements, whether or not they claim to be group health plans, has been inconsistent. At the same time, in recent years MEWAs have become more attractive to small employers as a means to pool risks and obtain health benefits at a lower cost. The Department seeks to determine the extent of compliance with the requirements of Part 7 by this important sector of the employee health benefits market.

The Department recognizes that multiemployer plans established by an association of employers and one or more labor organizations are structurally and operationally different from most MEWAs. The Department does not seek reporting by such plans except to the extent appropriate to assure that all MEWAs file a report. The Department is aware that administrators of some MEWAs have sought to avoid State insurance regulation by mischaracterizing their arrangements as being established or maintained pursuant to collective bargaining agreements. In many cases, such mischaracterized entities are not operated in a financially responsible manner and become unable to pay benefits within a short time. *See* GAO/HRD–92–40. Therefore, in order to obtain information on all entities that are MEWAs, the Department has determined that it is appropriate to require reporting by entities that claim the collective bargaining exception unless the entity has been in existence for at least three years.

B. Overview of the Interim Rule

Basis and Scope

Paragraph (a) of the interim rule sets forth the basis and scope for this annual reporting requirement for MEWAs and certain other entities (referred to as Entities Claiming Exception or ECEs) that offer or provide coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

Definitions

Paragraph (b) of the interim rule provides most of the definitions used in the interim rule. This definitions section includes both statutory definitions provided in ERISA, as amended by HIPAA, as well as certain other definitions used in the regulations. In particular, the terms ''group health plan,'' ''health insurance issuer,'' ''medical care,'' and ''MEWA'' are defined by reference to existing statutory and regulatory provisions. In addition, the term ''administrator'' is defined as the person specifically designated as the administrator by the terms of the instrument under which the MEWA or ECE is operated. However, if an administrator is not designated and the MEWA or ECE is a group health plan, the plan sponsor [6] is the administrator. Moreover, if an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.[7]

The term ''entity claiming exception'' or ''ECE'' is defined as an entity that claims it is not a MEWA due to the exception in section 3(40)(A)(i) of the Act. In general, this exception is for entities that are established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements. In connection with this exception, on August 1, 1995, the Department published a proposed rule for plans established or maintained pursuant to collective bargaining agreements under section 3(40)(A)(i) of ERISA. 60 FR 39208. Subsequently, in September of 1998, the Secretary established the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee. *See* 63 FR 50542. This Committee has negotiated a proposed rule establishing a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40)(A)(i) of ERISA. Upon issuance of a final regulation relating to ERISA section 3(40)(A)(i), this regulation may be modified to reflect the scope of this exception.

Finally, the term ''origination'' is defined to mean the occurrence of any

[5] This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of ERISA provides that State laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of State regulation depending on whether the MEWA is fully insured. Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

[6] The term *plan sponsor* is defined under section 3(16)(B) of ERISA as:

(i) The employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

[7] In these circumstances, the Department has previously expressed its view that the person or persons with such responsibility is the administrator for purposes of section 3(16) of ERISA. *See* Advisory Opinion Letter 83–43 to Robert J. Tanguay, August 23, 1983.

of the following events (and a MEWA or ECE will be considered to have been ''originated'' when any of these events occur):

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all MEWAs or ECEs participating in the merger were last originated at least 3 years before the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE and all MEWAs and ECEs that participated in the merger were last originated at least three years before the merger).

Whether a merger triggering a filing occurs is determined based on all the relevant facts and circumstances. However, in general, the addition of a new contributing employer to a MEWA or ECE would not constitute a merger that would trigger a filing. In addition, generally no merger triggering a filing occurs when participants represented by a local union that joins an existing MEWA or ECE begin receiving coverage under the MEWA or ECE.

Persons Required To Report

Paragraph (c) of the interim rule sets forth the persons required to report under the interim rule. First, the administrator of a MEWA that provides benefits consisting of medical care is required to report, whether or not the MEWA is a group health plan. For the reasons discussed above, the Department determined that it was necessary and appropriate to exercise various other regulatory authority in Title I of ERISA (see Statutory Authority, below) to require all MEWAs to report, regardless of whether they are group health plans. In addition, the administrator of an ECE is required to file if the ECE was originated at any time within 3 years before the annual filing due date. (This due date is described in paragraph (e)(2)(i) of the interim rule).

However, because a health insurance issuer, such as an insurance company, fits within the statutory definition of a MEWA, paragraph (c)(2) of the interim rule clarifies that nothing in the interim rule is to be construed to require reporting by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

Accordingly, subject to the exception described above for health insurance issuers, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is only required to file annually for the first three years following an origination. Under the interim rule, whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time that a filing would otherwise be due that the entity is maintained pursuant to one or more collective bargaining agreements, the entity is an ECE, and the ECE would not be required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA (for example, pursuant to regulations developed by the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee), filings would not be required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings would be required for years after the determination that the entity is a MEWA.

This interim rule further provides that, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination, nonetheless, does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the exception is claimed in good faith. However, the claiming of the exception for ECEs under this filing requirement does not preclude States from applying State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

Information To Be Reported.

Paragraph (d) of the interim rule describes the information required to be filed under this interim rule. Specifically, the administrator is required to file a completed copy of the Form M–1.[8] The substance of this form is published at the end of this document.

Also under paragraph (d), the Secretary may reject any filing that the Secretary determines to be incomplete, in accordance with § 2560.502c–5 (published separately in this issue of the **Federal Register**). If the Secretary rejects a filing as incomplete and if the administrator fails to submit a revised filing within 45 days of the rejection, paragraph (c) provides that the administrator may be subject to a civil action for legal and equitable relief, including civil penalties of up to $1,000 per day under section 502(c)(5) of ERISA as amended by HIPAA. (*See* § 2560.502c–5, published separately in this issue of the **Federal Register** for interim rules governing the assessment of civil penalties under section 502(c)(5) of ERISA.)

Timing

Paragraph (e) of the interim rule describes the timing rules applicable to a filing. Generally, a ''year to be reported'' is any calendar year in which the entity offered coverage. For an annual filing, the Form M–1 is generally required to be filed by the March 1 following any ''year to be reported'' (unless March 1 is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day). For the year 1999 ''year to be reported,'' however, a transition rule makes clear that a completed copy of the Form M–1 is required to be filed no later than May 1, 2000.

There is, under paragraph (e)(2)(iii), an additional, special filing requirement when a MEWA or ECE is originated. Under this special rule, in general, the administrator of a newly originated MEWA or ECE is required to file a completed copy of a Form M–1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day). (This report is referred to as a 90-Day Origination Report.) However, this special rule does not apply if the origination occurred between October 1 and December 31. Thus, for example, if a MEWA is originated on November 1, 2000, the administrator of the MEWA is not required to file an origination report in February of 2001. Instead, in the year 2001, the administrator is required to

[8] Section 505 of ERISA authorizes the Secretary to ''prescribe such regulations as he finds necessary or appropriate to carry out the provisions of [Title I of ERISA]. Among other things, such regulations may * * * prescribe forms * * * ''

file only the annual report due March 1, 2001.

In addition, the interim rule provides that no 90-day origination reports are required before May 1, 2000. Therefore, for an entity that is originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90-day origination report is required to be completed and filed no later than June 30, 2000.

In any event, under paragraph (e)(2)(iv), an extension may be granted for filing reports if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

Filing Address

Paragraph (f) provides that the address to be used for filings is set forth in the Instructions to the Form M–1.

Civil Penalties and Procedures; Transition Rule Creating Good Faith Safe Harbor Period

Paragraph (g) contains a cross-reference for civil penalties and procedures. The penalty and procedure regulations are being published separately in this issue of the **Federal Register**.[9] These regulations, and the instructions to the Form M–1 (also being published at the end of this document, make clear that the Department does not intend to assess penalties in cases where there has been a good faith effort to comply with a filing due in the year 2000. During this first year in particular, the Department is focused on educating administrators about this filing requirement and is committed to working with them to help them comply. In this regard, the Department has developed filers' guides which may be helpful in filing the Form M–1. These filers' guides will be made available on the Pension and Welfare Benefits Administration's website at www.dol.gov/dol/pwba and through their toll-free publication hotline at 1–800–998–7542. Also, the Pension and Welfare Benefits Administration's help desk (202–219–8818) is available in case administrators have questions or if they need any assistance in completing the Form M–1.

Compliance Dates

Paragraph (i) provides that reports filed pursuant to this reporting requirement are first due by May 1, 2000. (Therefore, on May 1, 2000, filings are due with respect to MEWAs or ECEs that provided coverage in calendar year 1999.) However, no 90-Day Origination Reports (described in paragraph (e)(2)(ii) of this section) are due before May 1, 2000. Therefore, for an entity that is originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90-day origination report is required to be completed and filed no later than June 30, 2000.

C. Interim Rule with Request for Comments

The principal purpose of these regulations is to determine the extent of compliance by MEWAs with part 7 of ERISA. ERISA Section 734 authorizes the Secretary to issue ''any interim final rules as the Secretary deems are appropriate to carry out the provisions of [Part 7].'' Thus, the authority in ERISA section 734 to issue interim regulations applies to this rule. As explained below, the Secretary has determined that this regulation should be issued as an interim final rule with requests for comments.

Part 7 was enacted as part of the Health Insurance Portability and Accountability Act of 1996. To implement certain requirements of part 7, the Secretary promulgated interim final regulations in April, 1997. During the period following promulgation of the April, 1997 regulations, the Department carried out an extensive educational campaign to assist all sectors of the regulated community to learn to apply the new requirements and received numerous comments on these regulations.

The Department decided not to promulgate the instant regulations during this period of adapting to the new requirements. Now that the regulated community has had more than two years to become familiar with the part 7 requirements, it is now appropriate, in the Secretary's view, that the instant regulations become effective, on an interim basis, as quickly as possible.

The Secretary believes that a period of interim effectiveness will provide a sound basis for developing a final rule. The Department is seeking comments from all those affected by these regulations and the Department will consider such comments, and will reevaluate these regulations following the comment period in the same way that it would if the regulation had been published as a non-final proposal. Based on such comments and other information obtained through the operation of this interim reporting requirement, the Department will make any necessary modifications to the reporting requirement when the regulation is issued in final.

The Secretary believes that the purpose of the MEWA reporting requirement will be best served if these rules are made effective as quickly as possible, now that the regulated community has had time to familiarize itself with part 7 and the substantive interim regulations. Registration of MEWAs was first recommended in a 1992 Government Accounting Office Report (GAO/HRD–92–40). The problems pointed out in that report continue to this day. To date, the Department has initiated approximately 358 civil and 70 criminal investigations (with 45 criminal convictions) affecting over 1.2 million participants and beneficiaries and involving over $83.6 million in unpaid claims. During each of the past 3 years, the Department has had an average of about 100 MEWA cases under active investigation. Thus, the identification of problem MEWAs and correction of violations remains an important investigative priority and consumes substantial resources.

Obtaining reimbursement for such losses is the greatest challenge the Department faces in pursuing these cases. Too often, when the Department discovers an unsound MEWA, it has already failed and there is no money to cover the participants' unpaid medical claims. In such cases discovered by the Department, where there has been a failure to pay claims, over 90% of the claims are likely to remain unpaid, unless the Department is able to intervene at an early stage of the problem. When the MEWA becomes unable to pay the health benefits it has promised, employees, employers and health care providers may suffer serious financial losses. The reporting requirements of these interim regulations are designed to allow earlier detection of unsound MEWAs and will reduce the risk of financial harm to these parties.

Economic Analysis Under Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition,

[9] Moreover, other relevant criminal penalties may apply. *See, e.g.,* 18 U.S.C. 1021 and 1035.

jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities.

The total cost of this interim final rule is estimated at $437,000 per year, or an average of approximately $163 for each of the 2,678 entities expected to be required to file the annual reporting form for MEWAs. HIPAA amended ERISA to add section 101(g){h}, which authorizes the Secretary of Labor to require reporting by MEWAs which are not group health plans for the purpose of determining the extent of their compliance with Part 7 of ERISA. The principal intent of Congress in enacting this provision was to ensure that all participants and beneficiaries of such arrangements receive the new health care protections incorporated into ERISA by HIPAA, MHPA, the Newborns' Act, and WHCRA.

The reporting requirement implemented by this interim final rule provides the most cost effective means of facilitating compliance with Part 7, as well as with the full range of other federal and State requirements that may apply to MEWAs under ERISA, the Internal Revenue Code, the Public Health Service Act, and State insurance statutes. The data collected as a result of the filing requirement will serve as the only source of uniform and complete information identifying these arrangements that will allow federal and State regulators to evaluate their compliance with all applicable requirements. Evaluations of compliance based on the information reported will be significantly more cost effective for both governmental entities and MEWAs than the alternative of active intervention by compliance examiners.

Increased compliance by these arrangements will be beneficial to participants and beneficiaries who are able to fully realize their rights under these new laws. A greater assurance of compliance by these arrangements will also be beneficial because, due at least in part to the interaction of federal and State requirements, their compliance with the various requirements which apply to them has been shown to be inconsistent. Although the provisions of Title I and IV of ERISA generally supercede State laws that relate to employee benefit plans, the regulation of MEWAs is a joint federal and State responsibility pursuant to ERISA section 514(b)(6). Section 514(b)(6) of ERISA provides, among other things, that State laws that regulate insurance may apply to fully insured MEWAs to the extent that these laws establish rating, solvency, and similar standards, and to other MEWAs to the extent that State insurance laws are not inconsistent with Sections 1 through 513 of ERISA. Knowledge of both federal and State requirements is therefore needed for an arrangement to make an appropriate determination concerning the requirements that apply to it.

Because State insurance statutes are not uniform, an arrangement doing business in more than one State may be required to comply with a range of States' varying requirements. Other legal and factual issues, such as whether an entity is established pursuant to a collective bargaining agreement or whether an arrangement for a staff leasing organization is maintained by more than one employer, may contribute to uncertainty about applicability of regulatory requirements. Identification of these entities and determination of the applicability of State insurance law through this reporting requirement will help ensure that administrators of these arrangements are aware of the requirements that apply, and that the protections intended to be provided under federal and State laws are actually implemented for the benefit of employers and participants who obtain their group health coverage through these arrangements.

Substantial ancillary benefits are expected to result from the public disclosure of this data. Participants with greater access to information about the arrangements through which they obtain group health coverage may better exercise their rights in the event of a dispute with the arrangement. The data collected will also enhance the capability to conduct analysis of the market segment represented by MEWAs, which will be useful to policy makers in evaluating the role of these entities in providing employment-based health benefits. The potential benefits of this interim final rule are, therefore, expected to outweigh its costs.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This 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.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the information collection request (ICR) included in this interim final rule, which would require reporting by MEWAs and certain other entities on a prescribed form. Respondents are not required to comply with the ICR incorporated in the form unless it displays a currently valid OMB control number. A copy of the ICR may be obtained by contacting the office of the Pension and Welfare Benefits Administration listed below.

The Department has submitted the ICR included in this interim final rule, using emergency review procedures, to OMB for review and clearance in accordance with PRA 95. OMB approval has been requested by February 28, 2000. The Department and OMB are 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 submission of responses.

Comments regarding the ICR should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235,

New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through April 11, 2000, OMB requests that comments be received within 30 days of publication of this interim final rule to ensure their consideration.

Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

The ICR implemented with this interim final rule will require administrators of MEWAs, as defined in section 3(40) of ERISA, and certain other multiple employer arrangements that seek to utilize the exception described in section 3(40)(A)(i) of ERISA (referred to in the interim final rule as ''Entities Claiming Exception'' (ECEs)), to file certain information with the Secretary of Labor. This filing is generally required to be made annually by March 1 for the calendar year just ended. In addition, expedited filing is required following origination of an entity required to file. However, an ECE is required to file for only the first three years following its origination. A form has been prescribed for this filing, the substance of which is published at the end of this document.

The information to be filed includes basic identifying information (names and addresses, telephone numbers, employer identification numbers), and the date of origination of the arrangement. The filer will also be required to identify the States in which the arrangement provides coverage, whether it is licensed as an insurer or otherwise authorized to operate in those States (with the corresponding license or registration numbers), and whether the arrangement, if not licensed, is fully insured by a health insurance issuer in each State. The filer must also state the number of participants in the arrangement and the number of States in which at least 20 percent of the arrangement's business (based on number of participants) is conducted.

The form poses specific questions concerning compliance with Part 7 of ERISA, including yes/no questions about litigation involving Part 7 of ERISA or corresponding provisions of the Internal Revenue Code or Public Health Service Act (with specific additional information to be provided, if there was litigation), and about compliance with provisions of Part 7 and implementing regulations with respect to HIPAA, MHPA, Newborns' Act, and WHCRA. The form must also be signed and dated.

Detailed instructions are supplied with the form, as are compliance worksheets, which are intended to provide filers with convenient summaries of the requirements of the HIPAA, MHPA, Newborns' Act, and WHCRA provisions of Part 7 of ERISA, and references to the statutory requirements. These worksheets are not required to be filed.

The information collected in connection with this filing requirement will be useful to the Department, other federal agencies, and the States, in determining the extent of compliance by MEWAs and ECEs with Part 7 of ERISA and parallel provisions of the Internal Revenue Code and the Public Health Service Act.

The information will be useful to federal and State authorities with oversight responsibilities for these arrangements, and to the public for a variety of reasons. The enforcement activities of the Department and the States have shown that, due at least in part to the complex interaction of State and federal regulatory requirements for multiple employer arrangements providing group health coverage, compliance with all the applicable State and federal rules has been inconsistent. For example, the March, 1992 General Accounting Office (GAO) Report entitled, ''EMPLOYEE BENEFITS—States Need Labor's Help Regulating Multiple Employer Welfare Arrangements'' (GAO/HRD–92–40) states that ''MEWAs have proven to be a source of regulatory confusion, enforcement problems, and in some instances, fraud.'' This is supported by results of GAO's 1991 survey in which 46 States reported non-compliance by MEWAs with applicable reporting, disclosure, funding, licensing and registration requirements.

MEWAs doing business in several States may be required to comply with licensing and solvency requirements of each State, which often differ significantly. Although ERISA was amended in 1983 to clarify the role of the States in the regulation of MEWAs [10] these arrangements must still make judgments with respect to a number of relatively complex legal and factual issues in order to determine which requirements are applicable. The absence of uniform information as to the identity and location of these entities often prevents both federal and State regulators from taking a proactive approach to ensuring compliance by these arrangements with the full range of requirements imposed upon them.

Although MEWAs which are group health plans under ERISA, and multiemployer group health plans established pursuant to a collective bargaining agreement are generally required to file Form 5500 in accordance with ERISA sections 101(b) and 104(a), these entities will also be required to file the annual report for MEWAs under this interim final rule. This is in part because Form 5500 does not require duplicate reporting with respect to compliance with Part 7. An important reason for requiring these groups to file is to collect uniform information on MEWAs that does not rely on the arrangements' assessments of their status as group health plans or their entitlement to claim an exception based on the existence of a collective bargaining agreement. Arrangements which might mischaracterize themselves as group health plans under ERISA or as multiemployer collectively bargained plans (and thus not MEWAs), or in any number of other ways, would otherwise be omitted from the data that would be available to the Department and the States to assess compliance by these arrangements. At the same time, the Department did not wish to require reporting by well established multiemployer plans that have been in operation for several years. As noted earlier, this interim final rule may be modified in the future if changes are needed as a result of the issuance of further guidance with respect to establishing criteria and a process for a finding by the Secretary that an agreement is a collective bargaining agreement for purposes of section 3(40)(A)(i) of ERISA. [11] At present, however, the Department considers it important to obtain complete data on all entities which may be considered MEWAs, including newly originated multiemployer collectively bargained group health plans in their first years of operation.

An ancillary benefit of the availability of complete data on the multiple employer health plan universe will be a significantly enhanced capability to conduct more thorough analysis of the market segment represented by MEWAs. Risk pooling by groups of employers has been considered to offer potential advantages in the purchase of health care coverage by small employers. Timely and complete information on these entities will be of significant utility in evaluating the effectiveness of existing arrangements in providing

[10] *See* note 5.

[11] *See* note 6.

employment-based health benefits. Greater access to information for participants may assist them in exercising their rights under these arrangements in the event of a dispute.

Estimates of the burdens associated with this filing requirement are based on the number of annual filers and the time assumed to be required to complete the form.

The Filer Universe

The entities that will be required to file the annual reporting form will include multiemployer collectively bargained group health plans (entities claiming exception, or ECEs) originated within three years of the filing date, MEWAs which are group health plans under ERISA, and MEWAs which are not group health plans under ERISA. A description of the Department's methods of estimating the number and characteristics of filers in each group follows.

Multiemployer Collectively Bargained Plans

These plans are generally required to file Form 5500, and as such, information is available concerning the number of such plans originated from year to year. For the purpose of estimating the number of potential filers, the Department reviewed the data collected from Form 5500 filings for the 1991 through 1995 plan years for collectively bargained multiemployer welfare plans which provided medical benefits. A period of longer than three years was examined in order to determine whether the numbers were reasonably consistent from year to year, and whether the data indicated a trend over this period. Individual records in this group were examined and adjusted for the purpose of this count for possible errors in filers' characterization of their filing entity (which is selected from a number of codes in the Form 5500 instructions). The resulting number of such plans originated since 1991 was 41, which amounts to an average of about 8 plans per year. The number of participants in those 41 plans was 78,702. This represents about 2% of the total of all multiemployer collectively bargained group health plan filers in 1995 (2,180 plans with 5,957,946 participants).

Examination of origination in each individual year shows that the number of plans established was reasonably similar from year to year. The Department considers a reasonable estimate of the number of new plans that are originated each year is 12, which is the greatest number originated in any single year during the period examined. This would result in approximately 36 filers in this category for each annual filing cycle, assuming that 12 plans are originated each year, and 12 plans will no longer be required to file the form. The average number of participants per plan in the 41 plans originated since 1990 was 1,900, while the greatest average number per plan in a single year was 3,200. Based on these averages, it could be assumed that participation would total between 23,000 and 38,000 for the 12 plans assumed to originate in any year. For purposes of estimating the number of participants in the affected plans in this category, a midpoint of 30,600 per year (2,550 participants per plan) for the 12 new plans, and 91,800 for all 36 filers has been used.

Certain characteristics of this group may also be estimated, based on the characteristics of both the 1995 filers originated since 1990 and all 1995 multiemployer health plan filers. In both groups, no more than 11 percent of plans had fewer than 100 participants, while less than 1 percent of total participants were covered by plans with fewer than 100 participants.

The methods of funding indicated by the filers on Form 5500 differ somewhat between the groups. The funding method categories are defined in the Form 5500 instructions. ''Trust only'' is generally used interchangeably with the more commonly understood terms ''self-funded'' or ''self-insured.'' ''Insured'' is considered to mean fully insured. Where ''Trust and Insurance'' is indicated, it is generally not possible to determine without examination of individual records whether the plan is essentially self-funded with stop-loss insurance, or whether the plan is entirely self-funded except to the extent that it includes specific insured benefits such as life or long term disability insurance. Consequently, this category will include a range of funding methods. For purposes of estimates of the burden of the filing requirement, a distinction is made between fully insured arrangements and all other arrangements. While estimates of the number of fully self-funded arrangements may also be of interest, only fully insured arrangements are segregated for purposes of estimates ultimately developed, due to a difference in form completion time for these entities.

The plan funding methods reported on Form 5500 for the 2,180 multiemployer collectively bargained group health plans (with 5,957,946 participants) filing in 1995 were compared with those for the 41 multiemployer collectively bargained group health plans (with 78,702 participants) established since 1990. The comparison showed that about 63 percent of the 41 plans, and 51 percent of the 2,180 plans reported being fully self-funded. Between 2 and 4 percent of both groups of plans reported being fully insured. The remainder (24 percent of the 41 plans, and 41 percent of the 2,180 plans reported funding through a combination of insurance and self-funding. It is assumed that the newly originated multiemployer collectively bargained group health plans will more closely resemble the group of 41 plans originated since 1990.

Multiple Employer Welfare Arrangements Which Are Group Health Plans Under ERISA

The number of filers in this category may be estimated in a manner similar to that used for estimating the ECE count. In general, most ERISA-covered welfare plans which provide medical benefits are required under the statute and regulations to file a Form 5500 annually unless the plan covers fewer than 100 participants and is either unfunded or fully insured. While data from Form 5500 filings will not include information on small plans due to this exemption from filing requirements, multiple employer plans are considered less likely to be excluded on this basis because the affiliation of at least two employers for the formation of a plan increases the likelihood that participation will exceed 100. However, because plans with fewer than 100 participants will be required to file the annual report for MEWAs, an adjustment would need to be made to account for the excluded plans.

Data from Form 5500 filings for 1995 plan years were reviewed with respect to plans indicating they provided medical benefits that were designated as multiemployer collectively bargained plans, multiple employer non-collectively bargained plans, and group insurance arrangements. Because the Department has been made aware of some multiple employer plan filers' uncertainty as to the appropriate entry for this element of the form, the source data in these categories were also examined. While it is not possible to determine the nature of a filing entity with certainty without reference to the facts and circumstances related to its establishment, a number of plans appeared to have been coded in such a way as to limit the usefulness of this data for the purpose of estimating the number of potential filers. For purposes of this estimate, therefore, entity codes were adjusted where a more appropriate choice was apparent. The resulting data, after exclusion of plans that appeared to

be single employer plans or collectively bargained plans, and inclusion of plans originally categorized as group insurance arrangements, were summarized to arrive at the initial estimate of the number and characteristics of filers. On this basis (and without yet adjusting for small plans exempted from Form 5500 filing requirements), 642 plans in this category covering approximately 1,913,000 participants would be expected to file the MEWA annual reporting form. The average number of participants per plan among this group is approximately 3,000. About 14 percent of these plans report self-funding only, while 31 percent report being fully insured. About 49 percent of these plans report a combination of insurance and self-funding.

Although the number of MEWA report filers which are multiple employer group health plans could be estimated by adjusting the number of Form 5500 filers to allow for plans exempted from Form 5500 filing requirements, the Department is unaware of an appropriate basis for such an adjustment. Instead, these exempt filers have been estimated in conjunction with the estimate of MEWA report filers which are not employee benefit plans under ERISA, as explained below.

Multiple Employer Welfare Arrangements Which Are Not Group Health Plans Under ERISA

The potential number of filers in this category is significantly more difficult to estimate because there is no single source of data on such arrangements. The Department therefore relied on three different data sources to develop an estimate of the number of potential filers. Data reported in the previously cited March, 1992 GAO report (GAO/HRD–92–40) were collected in GAO's survey of State insurance officials conducted in 1991. These data showed 1,034 MEWAs which were headquartered in the State in which the information was collected, and 2,213 MEWAs operating in States in which they were not headquartered.[12] Of the 1,034 MEWAs, 264 (25.5 percent) were characterized as ''fully insured'' and 770 (74.5 percent) were ''not fully insured.'' It was also reported that there were 2,581,438 participants and beneficiaries covered by the 1,034 MEWAs in the respondent States.

The figures may be somewhat understated due to the lack of survey data from a number of large States which reported data for another aspect of the survey indicating that participants has sustained losses as a result of MEWAs' failure to pay claims in the State. The number of these entities may also be expected to have changed during the period since the survey due to small group reforms in the States, the enactment of HIPAA, and a period of relative stability in health care costs that generally reduces economic pressures on employers seeking affordable coverage. It is generally believed that these factors have served to reduce the number of entities that obtain group health coverage through risk pooling arrangements such as MEWAs.

Furthermore, it is unclear whether the survey respondents would have distinguished between MEWAs which are group health plans and those which are not group health plans. Consequently, it is not possible to determine whether the number of MEWAs headquartered in the States may overlap to any degree with the estimate of the number of MEWAs which are ERISA-covered plans. The Department contacted the National Association of Insurance Commissioners and certain State representatives to whom it was subsequently referred to determine whether comparable and more current data were available, and concluded on the basis of these contacts that while several States might maintain certain current data elements, no comparable data set is available to support the updating or refinement of the GAO estimates.

Other more recent sources may serve to shed light on the usefulness of the GAO data in developing a current estimate of potential non-ERISA plan MEWA filers. The Department examined reports published by W.F. Morneau & Associates and the American Society of Association Executives[13] (ASAE) concerning membership surveys conducted in 1992 and 1997. The survey respondents were those associations which reported sponsoring health care plans for their members. The respondents would apparently include sponsors of plans covered by ERISA as well as arrangements not covered by ERISA. Respondents also included professional/individual associations, which would not typically be sponsors of ERISA-covered plans due to lack of an employment basis. Coverage sponsored by these types of associations may, however, be considered non-plan MEWAs based on the facts and circumstances surrounding the establishment and maintenance of the arrangement. The report also states that because the response rate to the 1997 survey was somewhat low (974 of 7,169 surveys distributed were returned), it would be conservative to assume that the survey represents no more than 50 percent of the total number of association health plans. On the basis of the 283 plans reported, then, it could be assumed that the number of association sponsored plans could be estimated at 566. The 1992 data were somewhat different, with 2,648 responses to 6,341 surveys distributed, resulting in 799 association sponsored plans being reported. However, the report on the 1997 survey offers many reasons for a decline in the number of plans sponsored, which supports the credibility of the observed decrease.

A different approach may also be taken to estimating the number of non-respondents which sponsor health plans, which results in a somewhat larger estimate of association plans. If it is assumed that the rate of sponsorship of plans among non-respondents is one-half the rate of sponsorship among respondents, it may be estimated that there are approximately 1,200 association sponsored plans. As noted, this estimate would likely include arrangements that would be considered to be plans under ERISA, as well as those that would not. This estimate would also include both trade/corporate association plans and professional/individual association plans. Other data presented in the Morneau/ASAE report indicate that 66 percent of association health plans are sponsored by trade/corporate associations. While this would tend to support reducing the estimate of association plans which might file the annual reporting form, the degree of imprecision already introduced may not support further refinement of this estimate.

If it is assumed, then, that there are 1,200 association plans to be considered among the universe of potential filers, an assumption concerning the funding mechanisms used is also needed. Assuming 75 percent of these plans are fully insured, as indicated by the 1997 report, 900 plans would be fully insured and 300 would not be fully insured.

Findings of an analysis conducted by the RAND Corporation of data from the 1997 Robert Wood Johnson Foundation

[12] According to GAO, comparison of these totals may give an indication of the number of MEWAs operating across State lines. GAO indicates that the numbers should not be added, because MEWAs operating in more than one State may have been counted in each State of operation.

[13] ''Survey of Association Member Health Plans,'' W.F. Morneau & Associates/ American Society of Association Executives, 1993 and 1997.

Employer Health Insurance Survey [14] offer another basis for the development of an estimate of the number of MEWAs. The findings address the prevalence of pooled purchasing among employer health plans through analysis of survey respondents' assessments of whether their establishment purchases insurance through (1) a purchasing cooperative or alliance, (2) a business coalition, (3) a multiple employer trust (MET) or multiple employer welfare arrangement (MEWA), or (4) a trade or professional association or other membership organization. The report concludes that about 25 percent of establishments participate in pooled purchasing in at least one of the forms described.

The survey data as weighted for purposes of the analysis indicate that a total of 394,000 establishments covering 5.7 million employees report offering insurance through a MEWA/MET or a trade association/membership organization. This includes 118,000 establishments which were pooled through a MEWA/MET and 276,000 establishments pooled through a trade association or membership organization. Employees reported to be covered through a MEWA/MET total 3.3 million, while those reported as covered through an association or membership organization total 2.4 million.

The MEWA/MET and trade association/membership association categories appear to include many of the arrangements that would be required to file the MEWA annual reporting form, including collectively bargained arrangements, without regard to whether the arrangement constitutes a plan for purposes of ERISA. It is also likely that potential filers will be found among the establishments reporting purchase through a purchasing alliance or business coalition. The total number of establishments which report purchasing through pooled purchasing arrangements, including business coalitions and purchasing alliances, but excluding known purchasing alliances, is 836,000. Employees of these establishments number 12 million. Known purchasing alliances are excluded because these are not considered likely to be MEWAs. Because these data are collected and presented on an establishment rather than plan basis, other adjustments are required in order to compare them with data reported in other sources.

One possible approach to imputing a estimated number of different arrangements from the employee counts reported in the pooled arrangements would be to simply divide the number of employees by the average number of participants in the multiple employer group health plans which file Form 5500 (between 2,500 and 3,000). Dividing the 12 million employees in this way results in an estimate of 4,000 to 4,800 separate arrangements. When applied to the trade association segment alone, the imputed number of separate arrangements would be between 800 and 1,000. This analysis, although imprecise, appears to support the comparability of the Morneau/ASAE data and the RAND analysis of the 1997 Robert Wood Johnson Foundation Employer Health Insurance Survey data.

Because a total based on all pooling arrangements will include collectively bargained multiemployer group health plans and multiple employer non-collectively bargained group health plans, the estimate must be reduced to avoid duplication. Reducing the estimated total of 4,800 arrangements by multiemployer and multiple employer group health plans counts results in a total of 2,200 MEWAs not previously counted, which cover an estimated 4 million employees.

The universe of filers, therefore, can be variously estimated as follows:

- 642 non-collectively bargained multiple employer group health plans which file Form 5500 plus 36 newly originated multiemployer collectively bargained group health plans (ECEs) covering a total of 1,943,551 participants (excludes non-plan MEWAs and small fully insured/unfunded plans exempt from filing) (1995 Form 5500 data);
- 1,034 MEWAs including plans and non-plans covering 2,581,438 participants (likely excludes some arrangements the States would recognize as ERISA covered plans) (1992 GAO report);
- 1,200 association plans including ERISA plans and non-ERISA plans (likely excludes both arrangements which are MEWAs not sponsored by associations and collectively bargained multiemployer plans) (1997 Morneau/ASAE survey); and
- 4,000 to 4,800 multiple employer association plans, collectively bargained plans, and MEWAs covering 12,000,000 participants (or 2,000 non-ERISA plan MEWAs covering 4,100,000 employees, after adjustment for multiemployer collectively bargained group health plans and multiple employer non-collectively bargained group health plans) (1997 RWJF Health Insurance Survey).

On the basis of these estimates, the Department believes a conservative assumption as to the number of MEWAs and entities claiming exception that will be required to file the annual reporting form in any year is 2,678. The method of developing the estimate of filers accounts for some arrangements which would be considered group health plans under ERISA but which are exempt from Form 5500 filing requirements, although their number is not separately identified.

Estimating the proportion of these arrangements which are fully insured, funded through a trust, or a combination of these methods is more problematic. The RAND analysis does not provide specific information on the funding method of the pooled arrangements, and the information reported in the other sources varies significantly. For example, 73 percent of the recently originated multiemployer collectively bargained plans were funded through a trust only, while only 4 percent were fully insured. Of the multiple employer non-collectively bargained ERISA plans which filed Form 5500, 14 percent were self-funded and 31 percent were fully insured. Of the MEWAs reported by the States in the GAO study, 25 percent were fully insured, while 75 percent of the association plans in the Morneau/ASAE survey reported being fully insured.

The funding status of the filers that reported their funding method on Form 5500 has been included as reported. In the absence of additional information as to the funding status of the 2,000 non-plan filers, the Department believes it is reasonable to assume that 50 percent (the midpoint between the 25 percent reported by GAO and the 75 percent reported by Morneau/ASAE) are fully insured. Although this assumption is somewhat arbitrary, it is relied on for purposes of the estimates of annual report filer burden only for estimating a variation in the burden expected in completing the form. The Department welcomes comments on the data and assumptions used in developing these estimates.

The resulting breakdown of arrangements between fully insured and not fully insured is shown below:

	Total	Fully insured	Not fully insured
Total	2,678	1,202	1,476
Multiemployer ECE	36	1	35
Multiple employer non-collectively bargained ERISA plans	642	201	441
Other MEWA	2,000	1,000	1,000

[14] ''Pooled Purchasing: Who Are the Players?'' Stephen H. Long and M. Susan Marquis, ''Health Affairs,'' July—August 1999.

Completing the MEWA Annual Reporting Form

Completion of this two-page form is expected to require between 2 hours and 50 minutes to 3 hours and 35 minutes. This estimate assumes that all filers will require an average of two hours to familiarize themselves with the form and read the instructions, particularly in the first years following implementation of the filing requirement. The identifying information in Parts I and II of the form and the signature block would be expected to require a limited amount of time to complete.

The most variable portion of the form is expected to be Part III, which includes information concerning the locations in which the arrangement does business, and its funding arrangements and licensing status in those locations. The amount of information to be entered here will vary directly with the number of States in which an entity operates. The degree of this variation is expected to be great, as some of the arrangements which will file are known to be State-specific, while others are national in scope.

Time required to complete this segment of the form is also expected to vary with the funding arrangement of the entity in any given State, and with the State's licensing requirements. Entities which are fully insured in the States in which they operate would be expected to require little time to complete the section because those entities are believed to be least likely to require licensure by a State. Those entities which are either partially or fully self-funded and which operate in States in which they are required to be licensed are expected to require the greatest amount of time to complete this section. The range of completion time assumed for this segment (from 30 minutes to an hour) is intended to allow for this variation.

The Department is aware that the States have implemented a range of regulatory requirements for both MEWAs and health plans sponsored by associations which are self-funded and conducting business in their jurisdictions. These requirements range from registration to full compliance with all of the solvency, rating, and other requirements of the State insurance code. The information that could be provided by the States, if collected directly from them, would include only those arrangements which are aware of the requirements in the State or States in which they do business, and which have elected to comply with those requirements. From time to time States still report being unaware of MEWAs operating within their jurisdictions, or in neighboring States but covering consumers in their jurisdictions, until problems are reported.

With respect to Part IV of the form, the Department assumed a 15 to 30 minute completion time depending again on whether or not an arrangement is fully insured. Fully insured arrangements are expected to be readily aware of their compliance with the specified aspects of Part 7 of ERISA because their insurance contracts will in most cases have been amended to bring them into compliance. Those arrangements which may not have considered the status of their compliance with these requirements may require additional time to answer the questions. No estimate of the time to respond to the question concerning litigation or enforcement proceedings is made because rate of litigation among all plans in general is believed to be low. While positive responses to this question are expected to be useful in assessing compliance with Part 7, the frequency of positive responses among the small group of filers is expected to be very low.

Based upon its experience with many types of multiple employer group health plans and other arrangements, the Department has assumed for its estimates of burden under the Paperwork Reduction Act that 90 percent of plans and arrangements will purchase services to meet the filing requirement rather than complete the form in-house. Because these arrangements by definition include at least two employers which are unrelated by ownership and which may or may not be related by trade or industry, an entity which is separate from the arrangement typically handles administrative duties for the arrangement. This may be the association or subsidiary of the association in the case of a plan sponsored by a trade association, or a third party administrator. This entity is commonly compensated for services such as billing employers, processing claims, or marketing the arrangement to other employers, by the plan or by the participating employers, through an assessment to the premium or other contribution collected from the employers. It is believed that the filing would be completed by this separate entity and that the entity would be compensated for this service. This assumption has no implication with respect to the person or entity obligated to file the form. The assumption is intended to provide an estimate of the cost of filing based on the entity expected as a practical matter to perform the tasks required by the form.

In developing the cost of preparation of the form, the Department has assumed a professional rate for a financial manager of approximately $50 per hour. Copying and mailing is estimated to require 1 minute at a clerical rate of $15 per hour plus $0.38 for mailing and materials. Electronic filing of the form is under consideration, but has not been reflected in these estimates. The Department requests comments on the assumptions used in this analysis.

In the Department's view, the filing requirement will not require the maintenance of records which were not already maintained by the MEWA in the ordinary course of its business.

Type of Review: New.

Agency: U.S. Department of Labor, Pension and Welfare Benefits Administration.

Titles: Annual Report for Multiple Employer Welfare Arrangements and Entities Claiming Exception (Form M–1).

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

OMB Number: 1210–NEW.

Frequency of Response: Annually.

Respondents: 2,678.

Responses: 2,678.

Estimated Burden Hours: 874.

Estimated Annual Cost (Operating and Maintenance): $ 394,300.

Comments submitted with respect to this information collection request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice

of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct a regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of this interim rule on small entities, and believes the rule will not have a significant impact on a substantial number of small entities. The reasons for this conclusion are explained in the discussion which follows.

For purposes of this discussion, the Department has deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. For this purpose, it is assumed that arrangements with fewer than 100 participants and which are (1) multiemployer collectively bargained group health plans originated within the last three years, (2) non-collectively bargained multiple employer group health plans, or (3) other multiple employer arrangements which provide medical benefits, are small plans.

PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities as that term is defined in the RFA. As explained earlier, it is estimated that 2,678 plans and arrangements will file the MEWA annual reporting form. Of the total number of Form 5500 filers included in this total, the number of plans with fewer than 100 participants is estimated at 257, or about 11 percent. This number may be slightly understated because data from Form 5500 filings were used to develop the estimate of multiple employer group health plans which fall within the definition of a ''welfare plan'' for purposes of ERISA. That data generally excludes welfare plans with fewer than 100 participants which are either unfunded or fully insured due to this group's exemption from filing requirements.

Consideration of the number of small plans affected by this filing requirement is more meaningful in the context of the total number of small private group health plans estimated to exist. Based on the health coverage reported in the Employee Benefits Supplement to the 1993 Current Population Survey, and a 1993 Small Business Administration survey of retirement and other benefit coverages in small firms, it is estimated that there are approximately 2.6 million private group health plans with fewer than 100 participants. As such, even if all of the potential filers of this form were small plans, only one-tenth of one percent of small group health plans would be affected by this requirement.

It is expected, however, that a very small number of these arrangements will have fewer than 100 participants. By their nature, the affected arrangements must involve at least two employers, which decreases the likelihood of coverage of fewer than 100 participants. Also, underlying goals of the formation of these arrangements, such as gaining purchasing and negotiating power through economies of scale, improving administrative efficiencies, and gaining access to additional benefit design features, are not as readily accomplished if the group of covered lives remains small. Finally, although an average provides no insight into the number of arrangements which have fewer than 100 participants, it may still be noted that the average number of participants per arrangement in the data examined to estimate the number of potential filers appeared to be between 2,500 and 3,000.

It is known, however, that the *employers* typically involved in these arrangements *are* small (that is, have fewer than 500 employees, which is generally consistent with the definition of small entity found in regulations issued by the Small Business Administration (13 CFR § 121.201)). For example, RWJF data referenced earlier show that 12 million employees at 836,000 establishments indicated they obtained coverage through pooled purchasing arrangements. This averages just over 14 employees per establishment. Further, while some employers of 500 or more employees may be included in multiple employer arrangements providing health benefits, groups of this size are typically considered large enough to realize the advantages of economies of scale on their own. It can generally be assumed, therefore, that nearly all employers participating in these arrangements are small. The number of small employers assumed to be affected is 836,000.

The total annual cost of the filing requirement is estimated at $437,400. The filing requirement applies to the administrator of the estimated 2,678 plans or arrangements, and is expected to cost an average of about $164 per plan or arrangement. If this amount were passed on directly to the employers assumed to participate in these arrangements, their additional cost would amount to about $0.50 per year on average.

It is expected that this requirement will be satisfied by professional staff of an entity that provides administrative services to the group health plan or arrangement under an existing agreement. Entities with expertise in management, accounting, and benefits administration are often either formed by the group of employers for the purpose of managing a group health plan, or are responsible for establishing the plan or arrangement and making it available to the employers.

No federal rules have been identified that duplicate, overlap, or conflict with this interim final rule. The Department has considered a number of reporting formats, and has proposed a form intended to collect only the information necessary to assess compliance with Part 7 of ERISA as simply as possible, given the complexities of these arrangements and the regulatory framework in which they operate. The design of the form, which requires reporting by arrangements rather than employers participating in the arrangements, limits the number of filers which will be required to comply with the requirement. Compliance guides have been made part of the report package for the purpose of lessening the time required to assess compliance, and assisting the arrangements in achieving compliance where additional action is required.

Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Because these rules are issued as interim final rules and not as a notice of proposed rulemaking, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) does not apply. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, this interim final rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

Statutory Authority

Sec. 29 U.S.C. 1024, 1027, 1059, 1132(c)(5), 1135, 1171–1173, 1181–1183, 1191–1194; Sec. 101, Pub. L. 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Multiple Employer Welfare Arrangements, Pension and Welfare Benefit Administration, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

1. The authority for Part 2520 is revised to read:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), 502(c)(5), 505, 701–703, 711–713, 731–734 Pub. L. 93–406, 88 Stat. 840–852 and 894 (29 U.S.C. 1021–1025, 1029–1031, 1135, 1171–1173, 1181–1183, 1191–1194), as amended by Pub. L. 104–191, 101 Stat. 1936 and Pub. L. 104–204, 101 Stat. 2944; Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 are also issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Part 2520 is amended by adding § 2520.101–2 to read:

§ 2520.101–2 Annual reporting by multiple employer welfare arrangements and certain other entities offering or providing coverage for medical care to the employees of two or more employers.

(a) *Basis and scope.* Section 101(g){h} [1] of the Act permits the Secretary of Labor to require, by regulation, multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (within the meaning of section 733(a)(2) of the Act), and that are not group health plans, to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of the Act are being carried out in connection with such benefits. Section 734 of the Act provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of the Act. This section sets out requirements for annual reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of the Act (Entities Claiming Exception or ECEs). These requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

Administrator means—

(1) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(2) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of the Act); or

(3) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

Entity Claiming Exception (ECE) means an entity that claims it is not a MEWA due to the exception in section 3(40)(A)(i) of the Act. (In general, this exception is for entities that are established and maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements).

Group health plan means a *group health plan* within the meaning of section 733(a) of the Act and § 2590.701–2.

Health insurance issuer means a *health insurance issuer* within the meaning of section 733(b)(2) of the Act and § 2590.701–2.

Medical care means *medical care* within the meaning of section 733(a)(2) of the Act and § 2590.701–2.

Multiple employer welfare arrangement (MEWA) means a multiple employer welfare arrangement within the meaning of section 3(40) of the Act.

Origination means the occurrence of any of the following three events (and a MEWA or ECE is considered to have been *originated* when any of the following three events occurs)—

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all of the MEWAs or ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section—

(i) The administrator of a MEWA that offers or provides benefits consisting of medical care, regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE that offers or provides benefits consisting of medical care during the first three years after the ECE is originated.

(2) *Exception.* Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

(3) *Construction.* For purposes of this section, the following rules of construction apply—

(i) Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time when a filing under this section would otherwise be required that the entity is maintained pursuant to one or more collective bargaining agreements, the entity is an ECE, and the administrator of the ECE is not required to file if its most recent origination was more than three years. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were otherwise due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for

[1] Section 1421(d)(1) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) created a new section 101(g) of ERISA relating to Simple Retirement Accounts. Subsequently, section 101(e)(1) of HIPAA also created a new section 101(g) of ERISA relating to MEWA reporting. Accordingly, when referring to section 101(g) of ERISA relating to MEWA reporting, this document cites section 101(g){h} of ERISA.

years after the determination that the entity is a MEWA.

(ii) In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination, nonetheless, does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

(d) *Information to be reported* (1) The annual report required by this section shall consist of a completed copy of the Form M–1 ''Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)'' (Form M–1) and any additional statements required in the instructions to the Form M–1. This report is available by calling 1–800–998–7542 and on the Internet at http://www.dol.gov/dol/pwba.

(2) The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with § 2560.502c–5.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of the Act and § 2560.502c–5).

(e) *Timing*—(1) *Period to be Reported.* A completed copy of the Form M–1 is required to be filed for each calendar year during all or part of which the MEWA or ECE offers or provides coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

(2) *Filing deadline*—(i) *General March 1 filing due date.* Subject to the transition rule described in paragraph (e)(2)(ii) of this section, a completed copy of the Form M–1 is required to be filed on or before each March 1 that follows a period to be reported (as described in paragraph (e)(1) of this section). However, if March 1 is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(ii) *Transition rule for Year 2000 filings.* For the year 1999 period to be reported, a completed copy of the Form M–1 is required to be filed no later than May 1, 2000.

(iii) *Special rule requiring a 90–Day Origination Report when a MEWA or ECE is originated*—(A) *In general.* Subject to paragraph (e)(2)(ii)(B) of this section, when a MEWA or ECE is originated, the administrator of the MEWA or ECE is also required to file a completed copy of the Form M–1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day).

(B) *Exceptions.* (*1*) Paragraph (d)(2)(ii)(A) of this section does not apply if the origination occurred between October 1 and December 31.

(*2*) Paragraph (d)(2)(ii)(A) of this section does not apply before May 1, 2000. Therefore, for an entity that is originated, for example, on January 1, 2000, no 90–day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90–day origination report is required to be completed and filed no later than June 30, 2000.

(iv) *Extensions.* An extension may be granted for filing a report if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

(f) *Filing address.* A completed copy of the Form M–1 is filed with the Secretary by sending it to the address prescribed in the Instructions to the Form M–1.

(g) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of the Act for persons who fail to file the information required under this section (including a transition rule applicable to filings due in the year 2000), see § 2560.502c–5. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of the Act, see § 2570.90 *et seq.*

(h) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) MEWA *A* began offering coverage for medical care to the employees of two or more employers July 1, 1989 (and continuous to offer such coverage). MEWA *A* does not claim the exception under section 3(40)(A)(i) of ERISA.

(ii) In this *Example 1,* the administrator of MEWA *A* must file a completed copy of the Form M–1 by May 1, 2000. Furthermore, the administrator of MEWA *A* must file the Form M–1 annually by every March 1 thereafter.

Example 2. (i) ECE *B* began offering coverage for medical care to the employees of two or more employers on January 1, 1992. ECE *B* has not been involved in any mergers and in 1999 the number of employees to which ECE *B* provides coverage for medical care is not at least 50 percent greater than the number of such employees on December 31, 1998.

(ii) In this *Example 2,* ECE *B* was originated was on January 1, 1992 has not been originated since then. Therefore, the administrator of ECE *B* is not required to file a Form M–1 on May 1, 2000 because the last time the ECE *B* was originated was January 1, 1992 which more than 3 years prior to May 1, 2000.

Example 3. (i) ECE *C* began offering coverage for medical care to the employees of two or more employers on July 1, 1998.

(ii) In this *Example 3,* the administrator of ECE *C* must file a completed copy of the Form M–1 by May 1, 2000 because the last date *A* was originated was July 1, 1998, which is less than 3 years prior to the May 1, 2000 due date. Furthermore, the administrator of ECE *C* must file a year 2000 annual report by March 1, 2001 (because July 1, 1998 is less than three years prior to March 1, 2001). However, if ECE *C* is not involved in any mergers that would result in a new origination date and if ECE *C* does not experience a growth of 50 percent or more in the number of employees to which ECE *C* provides coverage from the last day of the previous calendar year to any day in the current calendar year, then no Form M–1 report is required to be filed after March 1, 2001.

Example 4. (i) MEWA *D* begins offering coverage to the employees of two or more employers on January 1, 2000. MEWA *D* is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

(ii) In this *Example 4,* the administrator of MEWA *D* is not required to file Form M–1 on May 1, 2000 because it is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

Example 5. (i) MEWA *E* is originated on September 1, 2000.

(ii) In this *Example 5,* because MEWA *E* was originated on September 1, 2000, the administrator of MEWA *E* must file a completed copy of the Form M–1 on or before November 30, 2000 (which is 90 days after the origination date). In addition, the administrator of MEWA *E* must file a completed copy of the Form M–1 annually by every March 1 thereafter.

(i) *Compliance dates*—(1) Subject to paragraph (i)(2) of this section, reports filed pursuant to this reporting requirement are first due by May 1, 2000. (Therefore, on May 1, 2000, filings are due with respect to MEWAs or ECEs that provided coverage in calendar year 1999.)

(2) 90-Day Origination Reports (described in paragraph (e)(2)(ii) of this section) are first due by May 1, 2000. Therefore, for an entity that is

originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity originated, for example, on April 1, 2000, a 90-day origination report is required to be completed and filed no later than June 30, 2000.

Signed at Washington, DC, this 4th day of February 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

BILLING CODE 4510–29–P

1999 Form M-1 **MEWA/ECE Form** This Form is Open to Public Inspection	**Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)** This report is required to be filed under section 101(g){h} of the Employee Retirement Income Security Act of 1974 and 29 CFR 2520.101-2. ➤ See separate instructions before completing this form.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

PART I ANNUAL REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B**, as applicable.

A If this is an annual report, specify whether it is for:
(*1*) ☐ The 1999 calendar year; or
(*2*) ☐ The fiscal year beginning _____, _____ and ending _____, _____.

B If this is a special filing, specify whether it is:
(*1*) ☐ A 90-day origination report;
(*2*) ☐ An amended report; or
(*3*) ☐ A request for an extension.

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE
	1c Employer Identification Number (EIN)
	1d Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator
	2c Employer Identification Number (EIN)
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor
	3c Employer Identification Number (EIN)

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated . . . . . ➤ _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity offers or provides coverage.	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no," to **5b**, is the entity fully-insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	

You may attach additional pages if necessary.

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE . . . . . ➤ _____

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State, federal, administrative litigation or enforcement proceeding, whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) . . . . . ➤ □ Yes □ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include: (1) the case number (if any), (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the disposition of the case noted in the upper right corner. If you need additional space, you may attach additional pages.

9 Complete the following. (Note: The instructions to this form contain four detailed worksheets which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a	Is the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department's regulations issued thereunder? (See Worksheet A)	➤ □ Yes □ No □ N/A
9b	Is the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Worksheet B)	➤ □ Yes □ No □ N/A
9c	Is the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Worksheet C)	➤ □ Yes □ No □ N/A
9d	Is the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Worksheet D)	➤ □ Yes □ No □ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, ATTACH ADDITIONAL SHEETS THE SAME SIZE AS THIS FORM.

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of administrator ➤ _____ Date ➤ _____

Type or print name of administrator ➤ _____

Department of Labor
Pension and Welfare Benefits Administration

Instructions for Form M-1

Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

ERISA refers to the Employee Retirement Income Security Act of 1974

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form	Preparing the form
2 hrs.	50 min. - 1 hr and 35 min.

Contents

The instructions are divided into three main sections.

SECTION 1

1.1 Introduction

This form is required to be filed under section 101(g){h}* and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and 29 CFR 2520.101-2.

The Department of Labor, Pension and Welfare Benefits Administration (PWBA) is committed to working together with administrators to help them comply with this filing requirement. Filer's guides, which may be helpful in filing this report are available by calling the PWBA toll-free publication hotline at 1-800-998-7542 and on the Internet at: http://www.dol.gov/dol/pwba. If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the PWBA help desk at (202) 219-8818.

All Form M-1 reports are subject to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

* Both the Small Business Job Protection Act of 1996 (Pub. L. 104-188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

1.2 Who Must File

General rules

The "administrator" (defined below) of a "multiple employer welfare arrangement" (MEWA, defined below) generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an "entity claiming exception" (ECE, defined below) must file the report each year for the three years after the ECE is "originated" (defined below). (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

However, in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

Accordingly, subject to the exception described above for licensed or authorized health insurance issuers, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is required to file for three years following an origination. Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time of the filing that the entity is maintained pursuant to one or more collective bargaining agreements, the entity is an ECE, and the ECE is not required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for years after the determination that the entity is a MEWA.

In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

Definition of "Administrator"

For purposes of this form, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA) is the administrator. Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot

be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.

Definition of "Multiple Employer Welfare Arrangement" or "MEWA"
In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40).

Definition of "Entity Claiming Exception" or "ECE"
For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining agreements (contained in section 3(40)(A)(i) of ERISA).

The administrator of an ECE must file this report each year for the first three years after the ECE is "originated". (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Definition of "Originated"
For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals),

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the transaction have been offering or providing coverage for at least three years prior to the transaction), or

(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once. Each time an ECE is originated, filings are triggered.

1.3 When to File

General Rule
The administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than March 1 following any calendar year for which a filing is required.

*** Transition Rule for Year 2000 Filings:
For the 1999 Year to be Reported, the administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than May 1, 2000.

90-Day Origination Report
In general, an expedited filing is required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

Exceptions to the 90-Day Origination Report Requirement
(1) No 90-Day Origination Reports are due before May 1, 2000. (Therefore, for an entity that is originated, for example, on January 1, 2000, no 90-day origination report is required. Nonetheless, for an entity that is originated, for example, on April 1, 2000, a 90-Day Origination Report is required to be completed and filed no later than June 30, 2000.)

(2) No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions
A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must complete and file Parts I and II of the Form M-1 (and check **Box B(3)** in Part I) no later than the normal due date for the report. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of the request for extension must be attached to the completed Form M-1 when filed.

1.4 Where to File

Completed copies of the Form M-1 should be sent to:

Public Documents Room, Pension and Welfare Benefits Administration
Room N-5638, U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

1.5 Penalties

Good Faith Safe Harbor for Filings Due in Year 2000. The Department of Labor, Pension and Welfare Benefits Administration is committed to working together with administrators to help them comply with this filing requirement. In this regard, the Department does not intend to assess penalties in cases where there has been a good faith effort to comply with a filing due in the Year 2000.

However, in instances where there has not been a good faith effort to comply with a filing due in the Year 2000, and for any filing due after the Year 2000 (whether or not the administrator has made a good faith effort to comply), please be aware that ERISA provides for the assessment or imposition of a penalty for failure to file a report, failure to file a completed report, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report. In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported

General rule
The administrator of a MEWA or ECE that is required to file should complete the form using the previous calendar year's information. (Thus, for example, for a filing that is due by May 1, 2000, calendar year 1999 information should be used.)

Fiscal year exception
The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least six continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by May 1, 2000, fiscal year 1999 information may be used if the administrator has at least six continuous months of fiscal year 1999 information to report.) In this case, the administrator should check **Box A(2)** and specify the fiscal year.

2.2 The 90-Day Origination Report

When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there are two exceptions to the 90-Day Origination Report requirement: (1) No 90-Day Origination Reports are due before May 1, 2000. (Nonetheless, for an entity that is originated, for example, on April 1, 2000, a 90-Day Origination Report is required to be completed and filed by June 30, 2000.); and (2) No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date

The administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

2.4 Amended Report

To correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, **Box B(2)** checked and an original signature. When filing an amended report, answer all questions and circle the amended line numbers.

SECTION 3

Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions

Part I - Annual Report Identification Information
Complete either **Item A** or **Item B**, as applicable.

Item A: If this is an annual report, check either box A(1) or box A(2).
Check **box A(1)** if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)
Check **box A(2)** if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 1999 information is being used instead of calendar year 1999 information, specify the date the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Item B: If this is a special filing, check either box B(1), box B(2), or box (B)(3).
Check **box B(1)** if this form is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Reports.)
Check **box B(2)** if this form is an Amended Report. (See Section 2.4 on Amended Reports.)
Check **box B(3)** if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Part II - MEWA or ECE Identification Information

Items 1a through 1d: Enter the name and address of the MEWA or ECE, the telephone number of the MEWA or ECE, and any employer identification number (EIN) and plan number (PN) used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave **Item 1c** blank. If the MEWA or ECE does not have any PNs associated with it, leave **Item 1d** blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not by group health plans or employers that purchase coverage through the MEWA or ECE.

Items 2a through 2c: Enter the name and address of the administrator of the MEWA or ECE, the telephone number of the administrator, and any employer identification number (EIN) used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself.

Items 3a through 3c: Enter the name and address of the entity sponsoring the MEWA or ECE, the telephone number of the sponsor, and any employer identification number (EIN) used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. If the MEWA or ECE is not a group health plan, the administrator should enter the name, address, or telephone number of the entity that establishes or maintains the MEWA or ECE. If there is no such entity, leave **Item 3** blank and skip to **Item 4**.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, a MEWA or ECE is "originated" each time any of the following events occur:
(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);
(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the transaction have been offering or providing coverage for at least three years prior to the transaction); or
(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees during the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with

information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 5a. Under **Item 5a**, enter all States in which the MEWA or ECE offers or provides benefits for medical coverage.

In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, and the pertinent areas and installations of the Canal Zone.

Item 5b. Under **Item 5b**, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in each such State. (A "health insurance issuer" is defined, in pertinent part, in § 2590.701-2 of the Department's regulations, "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan.")

Item 5c. If the answer to Item 5b is "yes," under **Item 5c**, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. If the answer to Item 5b is "no," under **Item 5d** specify whether the MEWA or ECE is fully-insured by a health insurance issuer in each State.

Item 5e. If the answer to Item 5d is "yes," under **Item 5e** enter the name of the insurer and its NAIC number.

Item 5f. Under **Item 5f**, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance.

Item 5g. If the answer to Item 5f is "yes," under **Item 5g** enter the name of the stop-loss insurer and its NAIC number.

If more space is needed to complete **Item 5**, additional pages may be attached. These pages must indicate "Item 5 Attachment" in the upper right corner and must be in a format similar to that of **Item 5**.

Item 6: Of the States identified in **Item 5a**, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 employees of the two employers receive coverage through the MEWA. Three employers are located in State Y and 30 employees of the three employers receive coverage through the MEWA. Finally, one employer is located in State Z and 200 employees of the employer receive coverage through the MEWA. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23⅓% of its business in State X (70÷300 = 23⅓%) and 66⅔% of its business in State Z (200÷300 = 66⅔%). However, the administrator should not specify State Y because the MEWA conducts only 10% of its business in State Y (30÷300 = 10%)

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants eligible to receive coverage for benefits under the MEWA or ECE.

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997 at 62 FR 67687. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997 at 62 FR 66931. Also, regulations implementing the substantive provisions of Newborns' Act were published in the Federal Register on September 9, 1998 at 63 FR 48372 and on October 27, 1998 at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department's summary plan description (SPD) content regulations at 29 CFR 2520.102-3(u), 63 FR 48372 (September 9, 1998). Finally, on November 23, 1998, the Department issued informal guidance on WHCRA in the form of questions and answers. All of the above-mentioned guidance is available on the Department's website at www.dol.gov/dol/pwba and via the Pension and Welfare Benefits Administration's toll-free publications hotline at 1-800-998-7542.

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in the group market. A group health plan means an employee welfare benefit plan to the extent that the plan provides medical care (including items and services paid for as medical care) to employees or their dependents (defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. A health insurance issuer or issuer means an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance. Such term does not include a group health plan. Group market generally means the market for health insurance coverage offered in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if the MEWA or ECE is neither a group health plan nor a health insurance issuer, if the MEWA or ECE offers or provides coverage in the group market, the coverage is required to comply with Part 7 of ERISA.

Relation to Other Laws:
States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to the State Insurance Commissioner's Office.

For More Information: To obtain copies of the Department of Labor's booklet, "Questions and Answers: Recent Changes in Health Care Law," which includes information on HIPAA, MHPA, the Newborns' Act, and WHCRA, you may call the Department's toll-free publication hotline at 1-800-998-7542. This booklet is also available on the Internet at : www.dol.gov/dol/pwba. If you have any additional questions concerning Part 7 of ERISA, you may call the Department of Labor office nearest you or the Department's health care question hotline at 202-219-8776.

Items 8a and 8b: With respect to **Item 8a**, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under **Item 8a**, identify, in **Item 8b,** any such litigation or enforcement proceeding. If you need more space, you may attach additional pages. These pages must read "Item 8b Attachment" in the upper right corner.

Item 9a: The portability requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) comprise sections 701, 702, and 703 of ERISA, sections 9801, 9802, and 9803 of the Internal Revenue Code of 1986 (Code), and sections 2701 and 2702 of the Public Health Service Act (PHS Act).

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that meets the exception for certain small group health plans or if you are the administrator of a MEWA or ECE that offers only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Similarly, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet A may be helpful.

Item 9b: The Mental Health Parity Act of 1996 (MHPA) provisions are in section 712 of ERISA, section 9812 of the Code, and section 2705 of the PHS Act.

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that meets the exception for certain small group health plans or if you are the administrator of a MEWA or ECE that offers only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Second, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Third, if you are the administrator of a MEWA or ECE that does not provide both medical/surgical benefits and mental health benefits, you may answer "N/A." Finally, if you are the administrator of a MEWA or ECE that offers or provides coverage only to small employers (as described in the small employer exemption contained section 712(c)(1) of ERISA and § 2590.712(e) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder) or if the coverage satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and § 2590.712(f) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet B may be helpful.

Item 9c: The Newborns' and Mothers' Health Protection Act of 1996 (Newborn's Act) provisions are in section 711 of ERISA, section 9811 of the Code, and section 2704 of the PHS Act.

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A."

Moreover, if you are the administrator of a MEWA or ECE that does not provide benefits for hospital lengths of stay in connection with childbirth, you may answer "N/A." Finally, if you are the administrator of a MEWA or ECE that is subject to State law regulating such coverage, instead of the federal Newborns' Act requirements, in all States identified in **Item 5a**, in accordance with section 711(f) of ERISA and § 2590.711(e) of the Department's regulations (and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet C may be helpful.

Item 9d: The Women's Health and Cancer Rights Act of 1998 (WHCRA) provisions are in section 713 of ERISA and section 2706 of the PHS Act.

In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing coverage in the group market (regardless of whether you are a health insurance issuer).

However, if you are the administrator of a MEWA or ECE that meets the exception for certain small group health plans or if you are the administrator of a MEWA or ECE that offers only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations, and the corresponding provisions of the PHS Act and the regulations issued thereunder), you may answer "N/A." Similarly, if you are the administrator of a MEWA or ECE that offers or provides coverage that consists solely of excepted benefits (described in section 732(b) of ERISA and § 2590.732(b) of the Department's regulations, and the corresponding provisions of the Code and the PHS Act and the regulations issued thereunder), you may answer "N/A." Lastly, if you are the administrator of a MEWA or ECE that does not provide medical/surgical benefits with respect to a mastectomy, you may answer "N/A." Otherwise, answer "yes" or "no," as applicable.

For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet D may be helpful.

3.2 Voluntary Worksheets

Voluntary worksheets, which may be used to help assess an entity's compliance with Part 7 of ERISA, are included on the following pages of these instructions. These worksheets may also be helpful in answering **Items 9a** through **9d** of the Form M-1.

Worksheet A **(Form M-1)**	**Determining Compliance with the HIPAA Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the HIPAA provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to any of the questions below, you should review your entity's operations because the entity may not be in full compliance with the HIPAA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) Does the MEWA or ECE issue certificates of creditable coverage automatically to individuals who lose coverage under the MEWA or ECE and to individuals upon request? ..... ➤ □ Yes □ No

- Section 701(e) of ERISA and § 2590.701-5 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) require group health plans and group health insurance issuers to issue, free of charge, certificates of creditable coverage automatically to individuals who lose coverage and to any individual upon request.
- In the case of a certificate issued automatically, the certificate should reflect the most recent continuous period of creditable coverage. In the case of a certificate issued upon request, the certificate should reflect all creditable coverage that the individual had in the 24 months prior to the date of request. However, in no event is a certificate required to reflect more than 18 months of creditable coverage.
- Most health coverage is creditable coverage. However, coverage consisting solely of excepted benefits is not creditable coverage. Examples of benefits that may be excepted benefits include limited-scope dental benefits, limited-scope vision benefits, hospital indemnity benefits, and Medicare supplemental benefits.
- If you have a question whether health coverage offered by a MEWA or ECE is creditable coverage or is coverage consisting solely of excepted benefits, contact the Department of Labor office nearest you or call the Department's health care question hotline at 202-219-4377. This is not a toll-free number.

(2) Has the MEWA or ECE made available a procedure for individuals to request and receive certificates? ..... ➤ □ Yes □ No

- Section 2590.701-5(a)(4)(ii) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) requires group health plans and group health insurance issuers to establish a procedure for individuals to request and receive certificates.

(3) If the MEWA or ECE imposes a preexisting condition exclusion period, does it issue a notice informing individuals of the exclusion, the terms of the exclusion, and the right of individuals to demonstrate creditable coverage to reduce the period of the exclusion? ..... ➤ □ Yes □ No □ N/A

- Section 2590.701-3(c) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) requires that a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant before notifying the participant, in writing, of the existence and terms of any preexisting condition exclusion under the plan and of the rights of individuals to demonstrate creditable coverage.
- The description of the rights of individuals to demonstrate creditable coverage includes a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and a statement that the current plan or issuer will assist in obtaining a certificate from any prior plan or issuer, if necessary.

(4) If the MEWA or ECE imposes a preexisting condition exclusion period, does it issue letters of determination and notification of creditable coverage within a reasonable time after the receipt of individuals' creditable coverage information? ..... ➤ □ Yes □ No □ N/A

- Section 2590.701-5(d) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) states that, within a reasonable time following receipt of evidence of creditable coverage, a plan or issuer seeking to impose a preexisting condition exclusion with respect to an individual is required to disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual, and the basis for such determination, including the source and substance of any information on which the plan or issuer relied.

- In addition, the plan or issuer is required to provide the individual with a written explanation of any appeal procedures established by the plan or issuer, and with a reasonable opportunity to submit additional evidence of creditable coverage.

(5) If the MEWA or ECE imposes a preexisting condition exclusion period, does it comport with HIPAA's limitations on preexisting condition exclusion periods? ..... ➤ □ Yes □ No □ N/A

- Section 701(a)(1) of ERISA and § 2590.701-3(a)(1)(i) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that a plan or issuer may impose a preexisting condition exclusion period only if it relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the individual's enrollment date in the plan or coverage. (Therefore, genetic information is not treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.) The enrollment date, for purposes of the HIPAA limitations on preexisting condition exclusion periods, is the first day of coverage or, if there is a waiting period, the first day of the waiting period. (For health insurance issuers, State law may prescribe a shorter period than the 6-month period that generally applies.)

- Section 701(a)(2) of ERISA and section § 2590.701-3(a)(1)(ii) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that any preexisting condition exclusion period is limited to 12 months (18 months for late enrollees) after an individual's enrollment date in the plan or coverage. (For health insurance issuers, State law may prescribe a shorter period.)

- Section 701(a)(3) of ERISA and § 2590.701-3(a)(1)(iii) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that any preexisting condition exclusion period is reduced by the number of days of an individual's creditable coverage prior to his or her enrollment date.

- When determining the number of days of creditable coverage, the plan or issuer is not required to take into account any days that occur prior to a significant break in coverage. The federal law defines a significant break in coverage as a break of 63 days or more. However, State law applicable to health insurance coverage offered or provided by health insurance issuers may provide for a longer period.

- In any case, section 701(d) of ERISA and § 2590.701-3(b) provide that a group health plan, and a group health insurance issuer, may not impose any preexisting condition exclusion period with regard to a child who enrolls in a group heath plan within 30 days of birth, adoption, or placement for adoption and who does not incur a subsequent significant break in coverage. In addition, a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion relating to pregnancy. (For health insurance issuers, State law may further restrict the extent to which a preexisting condition exclusion may be imposed.)

(6) Does the MEWA or ECE issue notices of special enrollment rights to individuals who are eligible to enroll in the plan or coverage? ..... ➤ □ Yes □ No

- Section 2590.701-6(c) of the Department's regulations (as well as the corresponding provisions of the regulations issued under the Code and the PHS Act) requires that, on or before the time an employee is offered the opportunity to enroll in a group health plan or coverage, the plan or issuer provide the employee with a description of the plan's special enrollment rules.

- For this purpose, the plan may use the following model description of special enrollment rules:

> If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

(7) Does the MEWA or ECE provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption? ..... ➤ □ Yes □ No

- Section 701(f) of ERISA and § 2590.701-6 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) require group health plans, and group health insurance issuers, if certain conditions are met, to permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if the individual loses other coverage or acquires a new dependent through marriage, birth, adoption, or placement for adoption.

- For State laws applicable to health insurance issuers that may provide individuals with additional special enrollment rights, check with an attorney or the Insurance Commissioner's Office in your State.

(8) Do the MEWA's or ECE's rules for eligibility (including continued eligibility) comply with the nondiscrimination requirements that prohibit discrimination against any individual or a dependent of an individual based on any health factor? ..... ➤ □ Yes □ No

- Section 702(a) of ERISA and § 2590.702(a) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that a group health plan, and a group health insurance issuer, may not establish rules for eligibility (including continued eligibility, rules defining any applicable waiting periods, and rules relating to late and special enrollment) of any individual to enroll under the terms of the plan based on a health factor.

- The health factors are: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability.

- However, nothing requires a plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the plan or coverage. In addition, nothing prevents a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

(9) Does the MEWA or ECE comply with the nondiscrimination requirements that prohibit requiring any individual (as a condition of enrollment or continued enrollment) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor? ..... ➤ □ Yes □ No

- Section 702(b) of ERISA and § 2590.702(b) of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) provide that a group health plan, and a group health insurance issuer, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor (defined above).

- However, nothing restricts the amount that an employer may be charged for coverage under a group health plan and nothing prevents a plan or issuer from establishing premium discounts or rebates or modifying applicable copayments or deductibles in return for adherence to bona fide wellness programs.

(10) If the entity is a multiemployer plan or a MEWA, does it comply with the guaranteed renewability requirements, which generally prohibit it from denying an employer whose employees are covered under a group health plan continued access to the same or different coverage under the terms of the plan? ..... ➤ □ Yes □ No □ N/A

- Section 703 of ERISA (as well as the corresponding provisions in the Code) provides that a group health plan that is a multi-employer plan or a MEWA may not deny an employer whose employees are covered under the plan continued access to the same or different coverage under the terms of the plan, other than for nonpayment of contributions; for fraud or other intentional misrepresentation of material fact by the employer; for noncompliance with material plan provisions; because the plan is ceasing to offer any coverage in a geographic area; in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan acts without regard to the claims experience of the employer or any health factor in relation to those individuals or their dependents; and for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

- For other laws applicable to health insurance issuers that may provide additional guaranteed renewability requirements, check with an attorney or the Insurance Commissioner's Office in your State.

Worksheet B (Form M-1)	Determining Compliance with the Mental Health Parity Act (MHPA) Provisions in Part 7 of Subtitle B of Title I of ERISA Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the MHPA provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the question below, you should review your entity's operations because the entity may not be in full compliance with the MHPA provisions in Part 7 of ERISA. If you need help answering this question or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

Q. If the MEWA or ECE offers or provides both mental health benefits and medical/surgical benefits, does the MEWA or ECE comply with the requirements of the MHPA provisions, which are contained in section 712 of ERISA (as well as the corresponding provisions of the Code and the PHS Act)? ..... ➤ □ Yes □ No □ N/A

- Section 712 of ERISA and § 2590.712 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) generally provide for parity in the application of aggregate lifetime dollar limits and in the application of annual dollar limits between benefits for medical and surgical care and benefits for mental health coverage.
- However, these provisions do not require a group health plan or group health insurance coverage to provide any mental health coverage. And, MHPA does not apply to benefits for substance abuse or chemical dependency.
- In addition, there are exemptions for small employers and certain plans or coverage with increased costs.
- Finally, MHPA does not apply to benefits for services furnished on or after September 30, 2001.
- Contact the Department of Labor Office nearest you or call the Department's health care hotline at 202-219-4377 to find out more about these provisions.

Worksheet C **(Form M-1)**	**Determining Compliance with the Newborns' and Mothers' Health Protection Act (Newborns' Act) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the Newborns' Act provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the questions below, you should review your entity's operations because the entity may not be in full compliance with the Newborns' Act provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides benefits for hospital stays in connection with childbirth and is subject to the Newborns' Act, does the MEWA or ECE comply with the Newborns' Act's substantive requirements, which are contained in section 711 of ERISA (as well as the corresponding provisions of the Code and the PHS Act)? ..... ➤ □ Yes □ No □ N/A

- Section 711 of ERISA and § 2590.711 of the Department's regulations (as well as the corresponding provisions in the Code and the PHS Act and the regulations issued thereunder) generally provide that a group health plan, and a group health insurance issuer, that offers benefits for hospital lengths of stay in connection with childbirth may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child, following a vaginal delivery to less than 48 hours, and following a cesarean section to less than 96 hours, unless the attending provider, in consultation with the mother, decides to discharge earlier.

- In addition, such a plan or issuer may not require that the provider obtain authorization from the plan or issuer for prescribing any length of hospital stay up to 48 hours following a vaginal delivery and up to 96 hours following a cesarean section. Nor may such a plan or issuer penalize an attending provider for complying with this law or provide incentives to an attending provider to provide care in a manner that is inconsistent with this law. Nor may such a plan or issuer deny the mother or newborn eligibility or continued eligibility, or provide incentives to mothers to encourage them to accept less than the minimum length of stay required. Nor may such a plan or issuer restrict benefits for any portion of a period within a hospital length of stay required by this law in a manner that is less favorable than the benefits provided for any preceding portion of the stay.

- The Newborns' Act's requirements apply to all self-insured benefits offered in connection with childbirth. However, State law rather than federal law may apply to health insurance coverage offered in connection with childbirth if the State law meets certain criteria specified in section 711(d) of ERISA and § 2590.711(d) of the Department's regulations. (These criteria are also specified in the Code and the PHS Act and the regulations issued thereunder.) Based on a preliminary review of State laws as of July 1, 1998, State law rather than federal law applies to health insurance coverage offered in connection with childbirth in the following States:

  Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia. Health insurance coverage offered in connection with childbirth in other States should also comply with the federal Newborns' Act requirements.

  Moreover, the following States appear to have a State law applicable to health insurance coverage that references the federal Newborns' Act provisions:

  Delaware, Idaho, and Oregon.

  Finally, the following States and other jurisdictions do not appear to have a law regulating coverage for newborns and mothers that would apply to health insurance coverage. Therefore, the federal Newborns' Act provisions appear to apply to health insurance coverage in the following States:

  Hawaii, Michigan, Mississippi, Nebraska, Utah, Vermont, Wisconsin, Wyoming, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, and the pertinent areas and installations of the Canal Zone.

(2) If the MEWA or ECE or provides benefits in connection with childbirth and is a group health plan, does the MEWA or ECE comply with the disclosure requirements under the Newborn's Act? ..... ➤ □ Yes □ No □ N/A

- Section 711(d) of ERISA and § 2520.102-3(u) require group health plans providing maternity benefits to include a statement in their summary plan descriptions advising individuals of the Newborns' Act's requirements.

- For this purpose, a MEWA or ECE that is subject to the Newborns' Act disclosure requirements through ERISA may use the following sample language:

  > Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

- MEWAs and ECEs that are nonfederal governmental plans are subject to a similar disclosure requirement. For mandated language required to be used by such plans, see 45 CFR § 146.130(d)(2) (published in the **Federal Register** at 63 CFR 57561 on October 27, 1998).

Worksheet D **(Form M-1)**	**Determining Compliance with the Women's Health and Cancer Rights Act (WHCRA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	OMB No. 1210-xxxx Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the WHCRA provisions of Part 7 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the questions below, you should review your entity's operations because the entity may not be in full compliance with the WHCRA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor Pension and Welfare Benefits Administration office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides mastectomy coverage, does the MEWA or ECE comply with WHCRA's substantive requirements, which are contained in section 713 of ERISA (as well as the corresponding provisions of the PHS Act)? . . . . . ➤ □ Yes □ No □ N/A

- Section 713 of ERISA (as well as the corresponding provisions in the PHS Act) generally provides that a group health plan, and a group health insurance issuer, that offers mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas.
- In addition, a plan or issuer may not deny a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of WHCRA. Nor may a plan or issuer penalize or otherwise reduce or limit the reimbursement of an attending provider; or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to furnish care to an individual participant or beneficiary in a manner inconsistent with WHCRA.
- Plans and issuers may impose deductibles or coinsurance requirements for reconstructive surgery in connection with a mastectomy, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.
- State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage for reconstructive breast surgery that is required by WHCRA.

(2) If the MEWA or ECE offers or provides mastectomy coverage, does the MEWA or ECE comply with the disclosure requirements under WHCRA? . . . . . ➤ □ Yes □ No □ N/A

- Section 713(b) of ERISA (as well as the corresponding provisions of the PHS Act) establishes a one-time notice requirement under which group health plans, and their health insurance issuers, must furnish a written description of the benefits that WHCRA requires. This notice is required to be furnished as part of the next general mailing (made after October 21, 1998) by group health plans, and their health insurance issuers, or in the yearly information packet sent out regarding the plan, but, in any event, the one-time notice is required to be furnished not later than January 1, 1999.
- Section 713(a)(3) of ERISA (as well as the corresponding provisions of the PHS Act) establishes a disclosure requirement under which group health plans, and their health insurance issuers, must again describe the benefits required under WHCRA, but the notice is to be provided upon enrollment in the plan and annually thereafter.
- Both notices must indicate that, in the case of a participant or beneficiary who is receiving benefits under the plan in connection with a mastectomy and who elects breast reconstruction, the coverage will be provided in a manner determined in consultation with the attending physician and the patient for reconstruction of the breast on which the mastectomy was performed; surgery and reconstruction of the other breast to produce a symmetrical appearance; and prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas. The notice must also describe any deductibles and coinsurance limitations applicable to such coverage. (Under WHCRA, coverage of breast reconstruction benefits may be subject to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.)

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210–AA54

Interim Rule for the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that describes procedures relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974, (ERISA) as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g){h} of ERISA. The interim final rule clarifies the manner in which the Secretary will assess penalties under ERISA section 502(c)(5), as amended by HIPAA, and the procedures for agency review. Separate documents containing interim final rules implementing the reporting requirement under section 101(g){h} of ERISA and interim final rules relating to procedures for administrative hearings and appeals on assessments of penalties under ERISA section 502(c)(5) appear separately in this issue of the **Federal Register**.

DATES: *Effective date:* This interim final rule is effective April 11, 2000.

Comment date: Written comments are invited and must be received by the Department on or before March 13, 2000.

Applicability date: This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: ''MEWApen@pwba.dol.gov'' (without the quotation marks).

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains an interim final rule that provides guidance relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), for the failure or refusal to file a report pursuant to section 101(g){h}[1] of ERISA, as amended by HIPAA. This regulation is designed to parallel the procedures set forth in § 2560.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 101(b)(4).

B. Overview of the Interim Final Rule

Section 502(c)(5) provides that the Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the report required to be filed under section 101(g){h}. In order to implement this provision, the Department is publishing this interim final rule, and, in a separate document, interim final rules relating to procedures for administrative hearings and appeals on assessments of civil penalties under ERISA section 502(c)(5).

In general, the interim final rule in § 2560.502c–5, discussed in detail below, addresses:

- The circumstances under which a penalty may be assessed (§ 2560.502c–5(a));
- Factors considered by the Department in determining the amount of a penalty (§ 2560.502c–5(b));
- The provision of notice to the administrator of the Department's intention to assess a penalty (§ 2560.502c–5(c));
- Waiver of all or part of the penalty by the Department upon a showing of reasonable cause and the requirements relating to a showing of reasonable cause (§ 2560.502c–5(d) and (e));
- The effect of a failure to file a statement of reasonable cause (§ 2560.502c–5(f));
- The provision of notice to the administrator of the Department's findings as to reasonable cause and the effect of such notice where a penalty is assessed (§ 2560.502c–5(g));
- The effect of a request for a hearing before an administrative law judge (§ 2560.502c–5(h));
- Service of notices (§ 2560.502c–5(i));
- The liability of the administrator for assessed penalties (§ 2560.502c–5(j));
- A cross-reference to procedural rules relating to administrative hearings (§ 2560.502c–5(k)); and
- An applicability date provision (§ 2560.502c–5(l)).

In general, the assessment of penalties under section 502(c)(5) and § 2560.502c–5 would occur only in those instances where the administrator fails or refuses to file a report within the prescribed time frames or, after notification that the report has been rejected and the reasons therefor, where the administrator fails or refuses to file a corrected report within the 45 day period prescribed in § 2560.502c–5(b)(3). Accordingly, in the case of a report rejected under § 2520.101–2(d)(2), the administrator can avoid the assessment of any penalty under section 502(c)(5) by making the necessary corrections to the filing within the prescribed time frame. Moreover, as reflected in paragraph (g) of the interim final rule, penalties may be waived, in whole or in part, upon the administrator's showing of reasonable cause for the failure to file a complete or timely report.

C. Discussion of the Interim Final Rule

1. Scope

Paragraph (a) of the interim final rule addresses the general application of section 502(c)(5). Paragraph (a)(1) provides that the administrator of a MEWA that is not a group health plan and for which a report is required to be filed under section 101(g){h} of ERISA and § 2520.101–2 is liable for the penalties assessed under section 502(c)(5) for each failure or refusal to file a completed report. Accordingly, if a person is required to file more than

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of EIRSA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

one report because that person serves an administrator with respect to several entities for which a filing is required, separate penalties may be assessed with respect to each instance for which there is a failure or refusal to file the required report. Paragraph (a)(2) defines a failure or refusal to file the report as a failure or refusal to file, in whole or in part, that information described in ERISA section 101(g){h} and § 2520.101–2, at the time and in the manner prescribed for such filings. Accordingly, the filing of an incomplete report will be treated as a failure to file under section 502(c)(5). *See* § 2520.101–2(d)(2).

2. Amount Assessed

Paragraph (b)(1) of the interim final rule provides that the Department shall take into account the degree and/or willfulness of the failure to file the report in determining the amount to be assessed under section 502(c)(5). Consistent with the terms of section 502(c)(5), paragraph (b)(1) provides that the penalty assessed by the Department shall not exceed $1,000 a day. With regard to the period for which a penalty may be assessed, paragraph (b)(1) provides that the penalty generally will be computed from the date of the administrator's failure or refusal to file the report and continue up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101–2, as determined by the Secretary, is filed. Accordingly, under paragraph (b)(1) of this section, liability for penalties under section 502(c)(5) would continue for each day up to the date compliance is achieved. However, under paragraph (b)(2), the interim final rule provides for tolling of the daily penalty where, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c)), the administrator files with the Department a statement of reasonable cause for the failure to file (as described in paragraph (e)). Under paragraph (b)(2), the administrator will not incur liability for penalties for any day beginning with the date the Department serves the administrator a copy of the notice to assess a penalty and ending with the day after the Department issues the notice of determination on the statement of reasonable cause (as described in paragraph(g)). This limited tolling of the penalty will permit MEWA administrators to present arguments to the Department concerning any reasonable cause for the failure to file without incurring penalties for the period of time during which the administrator's statement of reasonable cause is being considered by the Department.

Paragraph (b)(3) defines the date on which an administrator failed or refused to file the report as the date on which the report was due (determined without regard to any extension of time for filing). In this regard, paragraph (b)(3) provides that a report which is rejected under § 2520.101–2(d)(2) shall be treated as a failure to file the report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection.

In those situations where an extension of time is granted for the filing of the report and the administrator fails either to file a timely report or a complete report within the extension period, the administrator should not, for purposes of the section 502(c)(5) penalty, benefit from the requested extension. Accordingly, the interim rule states that for purposes of paragraph (b)(3), the penalty is assessed beginning on the day after the date of the administrator's failure or refusal to file the report.

3. Notice of Penalty

Paragraph (c) of the interim final rule provides that, prior to the assessment of any penalty under section 502(c)(5), the Department shall provide the administrator with a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of the penalty, the period to which the penalty applies, and a statement of the facts and reasons for the penalty. This notice is to be served in accordance with the service of notice provisions of § 2560.502c–5(i) of this interim final rule. Under § 2560.502c–5(f) of this interim final rule, this notice becomes a final order of the Secretary, within the meaning of § 2570.91(g) (*see* interim final rules §§ 2570.90 *et seq.*, published separately in this issue of the **Federal Register**), within 30 days of the service of notice, unless a statement of reasonable cause, described in § 2560.502c–5(e) of the interim final rule, is filed with the Department.

4. Waiver of Penalty

Paragraphs (d), (e), (f), (g) and (h) of the interim final rule generally relate to the waiver of penalties under section 502(c)(5). Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(5) upon a showing of reasonable cause for the failure to file the report. Paragraph (e) provides that, subsequent to the issuance of a notice of the Department's intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice to make an affirmative showing of reasonable cause for the failure to file a complete report or why the penalty, as calculated, should not be assessed. Paragraph (e) requires that the statement of reasonable cause be in the form of a written statement that sets forth all the facts alleged in support of reasonable cause and contains a declaration by the administrator that the statement is made under penalties of perjury.

Paragraph (f) describes the effect of a failure to file the statement of reasonable cause within the prescribed 30 day period. A failure on the part of the administrator to file a timely statement of reasonable cause will constitute a waiver of the right to appear and contest the facts alleged in the Department's notice and an admission of the facts alleged in the notice for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(5). Under paragraph (f), the Department's notice of intent to assess a penalty, described in paragraph (c), then becomes a final order of the Secretary, within the meaning of paragraph (g) of § 2570.91. (*See* §§ 2570.90 *et seq.*, published separately in this issue of the **Federal Register**).

Paragraph (g)(1) of the interim final rule provides that, following a review of the facts alleged in the statement of reasonable cause, the Department, in a notice of determination, shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty and a brief statement of the reasons for assessing the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). In general, paragraph (h) provides that the notice described in paragraph (g) shall not become a final order unless, within 30 days of the date of service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.90 *et seq.* (published separately in this issue of the **Federal Register**), and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.92. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g).

5. Service of Notices

Paragraph (i) of the interim final rule describes the manner in which the notice of intent to assess a penalty, described in paragraph (c), and the

notice of determination on a statement of reasonable cause, described in paragraph (g), will be served. Under paragraph (i) of the interim final rule, service of notice shall be made either: (1) By delivering a copy to the administrator or the administrator's representative; (2) by leaving a copy at the principal office, place of business, or residence of the administrator or the administrator's representative; or (3) by mailing a copy to the last known address of the administrator or the administrator's representative. If service is accomplished by certified mail, service is complete upon mailing. If service is done be regular mail, service is complete upon receipt by the addressee.

6. Liability

Paragraph (j) of the interim final rule clarifies the liability of the parties for penalties assessed under section 502(c)(5). Paragraph (j)(1) provides that if more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable for such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(5) is personally liable for the payment of such penalty. Paragraph (j)(2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(5) is the personal liability of the person against whom the penalty is assessed and not a liability of the MEWA. Accordingly, assets of the MEWA can not be used to pay the penalty.

7. Applicability

Paragraph (l) of the interim rule clarifies that this section generally applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000. Under a transition safe harbor period, however, no civil penalty will be assessed against an administrator that has made a good faith effort to comply with a § 2520.101–2 filing that is due in the Year 2000. This transition rule was created because, during this first year in particular, the Department is focused on educating administrators about this filing requirement and is committed to working with them to help them comply. In this regard, the Department has developed filers' guides which may be helpful in filing the Form M–1. These filers' guides will be made available on the Pension and Welfare Benefits Administration's website at www.dol.gov/dol/pwba and through their toll-free publication hotline at 1–800–998–7542. Also, the Pension and Welfare Benefits Administration's help desk (202–219–8818) is available in case administrators have questions or if they need any assistance with filings.

D. Interim Final Rule With Request for Comments

Section 734 of ERISA (formerly section 707) authorizes the Secretary of Labor, consistent with section 104 of HIPAA, to promulgate any such regulations as may be necessary or appropriate to carry out the provisions of Part 7 of ERISA. In addition, this section specifically authorizes the Secretary to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. The report required to be filed under section 101(g)(h) is for the purpose of determining the extent to which the requirements of Part 7 are being carried out. Accordingly, the Department has determined that issuing this regulation in interim final form is necessary in order for the Secretary to continue to effectively enforce the requirements of section 101(g){h} of ERISA and the implementing regulations under § 2520.101–2. Written comments on these interim rules are invited.

E. Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

F. Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA) requires each Federal agency to perform an initial regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this interim final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants. The Department invites comments on the effect of this interim final rule on small entities.

H. Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

I. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Statutory Authority

The interim final rule set forth herein is issued pursuant to the authority contained in section 502(c)(5) of ERISA (Pub. L. 104–191, 110 Stat. 1936, 1952, 29 U.S.C. 1132(c)(5)), section 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135) and section 734 of ERISA (Pub. L. 104–204, 110 Stat. 2874, 2935, 29 U.S.C. 1194c), and under Secretary of Labor's Order 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Multiple Employer Welfare Arrangements, Pension and Welfare Benefits Administration, Reporting and disclosure.

For the reasons set out in the preamble, Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—[AMENDED]

1. The authority for Part 2560 is revised to read:

Authority: 29 U.S.C. 1132, 1135, 1194 and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under 29 U.S.C. 1133.

2. Part 2560 is amended by adding § 2560.502c–5 to read:

§ 2560.502c–5—Civil penalties under section 502(c)(5).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 Pub.L. 93–406, 88 Stat. 840–52, as amended by Pub. L. 104–191, 101 Stat. 1936) (the Act), the administrator of a multiple employer welfare arrangement (MEWA) (within the meaning of section 3(40)(A) of the Act) that is not a group health plan, and that provides benefits consisting of medical care (within the meaning of section 733(a)(2)), for which a report is required to be filed under section 101(g){h} of the Act and § 2520.101–2, shall be liable for civil penalties assessed by the Secretary under section 502(c)(5) of the Act for each failure or refusal to file a completed report required to be filed under section 101(g){h} and § 2520.101–2. The term ''administrator'' is defined in § 2520.101–2(b).

(2) For purposes of this section, a failure or refusal to file the report required to be filed under section 101(g){h} shall mean a failure or refusal to file, in whole or in part, that information described in section 101(g){h} and § 2520.101–2, on behalf of the MEWA, at the time and in the manner prescribed therefor.

(b) *Amount assessed.*—(1) The amount assessed under section 502(c)(5) shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure to file the report. However, the amount assessed under section 502(c)(5) of the Act shall not exceed $1,000 a day, computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g){h} and § 2520.101–2, as determined by the Secretary, is filed.

(2) If, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section), the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the report shall be the date on which the report was due (determined without regard to any extension of time for filing). A report which is rejected under § 2520.101–2 shall be treated as a failure to file a report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection. If a revised report meeting the requirements of this section, as determined by the Secretary, is not submitted within 45 days of the date of the notice of rejection by the Department, a penalty shall be assessed under section 502(c)(5) beginning on the day after the date of the administrator's failure or refusal to file the report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(5), the Department shall provide to the administrator of the MEWA a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of such penalty, the period to which the penalty applies, and a statement of the facts and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(5) on a showing by the administrator that there was reasonable cause for the failure to file the report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to file a statement of reasonable cause for the failure to file a complete report or why the penalty, as calculated, should not be assessed. A showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g).

(g) *Notice of the determination on statement of reasonable cause*—(1) The Department, following a review of all the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.91(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.90 *et seq.*, and files and answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.92. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g).

(i) *Service of notice*—(1) Service of notice shall be made either:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee

(j) *Liability*—(1) If more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(5) pursuant to a final order, within the meaning of § 2570.91(g), shall be personally liable for the payment of such penalty.

(k) Cross-reference. See §§ 2570.90 through 101 of this chapter for procedural rules relating to administrative hearings under section 502(c)(5) of the Act.

(l) *Applicability date*—(1) *In general.* This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

(2) *Transitional safe harbor period.* No civil penalty will be assessed against an administrator that has made a good faith effort to comply with a § 2520.101–2 filing that is due in the Year 2000.

Signed at Washington DC, this 4th day of February, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–2936 Filed 2–10–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

RIN 1210–AA54

Interim Rule Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that describes procedures relating to administrative hearings, in connection with the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) of ERISA authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g){h} of ERISA. Separate documents are also being published today in the **Federal Register** containing interim final rules implementing the reporting requirement under section 101(g){h} of ERISA and interim final rules describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5).

DATES: *Effective date:* This interim final rule is effective April 11, 2000.

Comment date: Written comments are invited and must be received by the Department on or before March 13, 2000.

Applicability Date: This section applies to administrators of multiple employer welfare arrangements that are not group health plans beginning May 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to: Pension and Welfare Benefits Administration, Room C–5331, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: MEWA reporting. Written comments may also be sent by Internet to the following address: ''MEWAproc@pwba.dol.gov'' (without the quotation marks).

All submissions will be open to public inspection and copying from 8:30 a.m. to 4:30 p.m. in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7006). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains an interim final rule that provides guidance relating to the procedures for administrative hearings and appeals regarding the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA), for the failure or refusal to file a completed report pursuant to section 101(g){h} [1] of ERISA, as amended by HIPAA. This regulation is designed to parallel the procedures set forth in § 2570.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 104(b)(4).

B. Overview of the Interim Final Rule

Section 502(c)(5) provides that the Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the report required to be filed under section 101(g){h}. In order to implement this provision, the Department is publishing this interim final rule, and in a separate document, an interim final rule describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5). *See* § 2560.502c–5.

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

This document contains an interim final rule that establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to an assessment by the Department of Labor (the Department) of a civil penalty under section 502(c)(5), and for appeals of an ALJ decision to the Secretary or the Secretary's delegate. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for the purpose of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary of Labor's Order 1–87, 52 FR 13139 (April 21, 1987).

The Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges in Subpart A of 29 CFR Part 18, 48 FR 32538 (1983). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of Subpart A of 29 CFR Part 18 and a rule or procedure required by statute, executive order, or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of Subpart A of 29 CFR Part 18 to the assessment of civil penalties under ERISA section 502(c)(5) and has decided to adopt many, though not all, of the provisions of Subpart A of 29 CFR Part 18 for these proceedings. Accordingly, adjudications relating to civil penalties under ERISA section 502(c)(5) will be governed by the following sections [2] of Subpart A of 29 CFR Part 18:

§ 18.4 Time computations.
§ 18.5 (c) through (e) Responsive pleadings—answer and request for hearing.
§ 18.6 Motions and requests.
§ 18.7 Prehearing statements.
§ 18.8 Prehearing conferences.
§ 18.11 Consolidation of hearings.
§ 18.12 Amicus curiae.
§ 18.13 Discovery methods.
§ 18.15 Protective orders.
§ 18.16 Supplementation of responses.
§ 18.17 Stipulations regarding discovery.
§ 18.18 Written interrogatories to parties.
§ 18.19 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.
§ 18.20 Admissions.
§ 18.21 Motion to compel discovery.
§ 18.22 Depositions.
§ 18.23 Use of depositions at hearings.
§ 18.24 Subpoenas.
§ 18.25 Designation of administrative law judge.
§ 18.26 Conduct of hearings.
§ 18.27 Notice of hearing.
§ 18.28 Continuances.
§ 18.29 Authority of administrative law judge.
§ 18.30 Unavailability of administrative law judge.
§ 18.31 Disqualification.
§ 18.32 Separation of functions.
§ 18.33 Expedition.
§ 18.34 Representation.
§ 18.35 Legal assistance.
§ 18.36 Standards of conduct.
§ 18.37 Hearing room conduct.
§ 18.38 Ex parte communications.
§ 18.39 Waiver of right to appear and failure to participate or to appear.
§ 18.40 Motion for summary decision.
§ 18.42 Expedited proceedings.
§ 18.43 Formal hearings.
§ 18.44 Evidence.
§ 18.45 Official notice.
§ 18.46 In camera and protective orders.
§ 18.47 Exhibits.
§ 18.48 Records in other proceedings.
§ 18.49 Designation of parts of documents.
§ 18.50 Authenticity.
§ 18.51 Stipulations.
§ 18.52 Record of hearings.
§ 18.53 Closing of hearings.
§ 18.54 Closing the record.
§ 18.55 Receipt of documents after hearing.
§ 18.56 Restricted access.
§ 18.59 Certification of official record.

This interim final rule relates specifically to procedures for assessing civil penalties under section 502(c)(5) of ERISA and are controlling to the extent they are inconsistent with any portion of Subpart A of 29 CFR Part 18. This interim final rule is designed to maintain the maximum degree of uniformity with the rules set forth in Subpart A of 29 CFR Part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(5). For purposes of clarity, where a particular section of the existing procedural rules would be affected by these interim final rules, the entire section of the existing procedural rules (with the appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural rules set forth below involve changes from, or additions to, the rules in Subpart A of 29 CFR Part 18. The specific modifications to the rules in Subpart A 29 CFR Part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

C. Discussion of the Interim Final Rules

1. In General

The applicability of these procedural rules under section 502(c)(5) is set forth in § 2570.90. In this regard, it should be noted that the procedural rules contained herein apply only to adjudicatory proceedings before ALJs of the U.S. Department of Labor. The interim rule in § 2560.502c–5, also being published today, sets forth the procedures relating to issuance by PWBA of notices of intent to assess a penalty under ERISA section 502(c)(5), as well as procedures for agency review of statements of reasonable cause filed by persons against whom a penalty is assessed. Under the interim final rule contained in this notice, an adjudicatory proceeding before an ALJ is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(5) files an answer to a notice of the agency's determination on a statement of reasonable cause. See § 2570.91(c) and (d) below, and § 2560.502c–5(h), published separately in this issue of the **Federal Register**.

The definitional section (§ 2570.91) of these interim final rules incorporates the basic adjudicatory principles set forth in Subpart A of 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(5). In this respect, it differs from its more general counterpart at § 18.2 of this title. In particular, § 2570.91 states that the term ''Secretary'' means the Secretary of Labor and includes various persons to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority that the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. As noted above, the Secretary of Labor has delegated most of his or her authority under ERISA to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or a properly authorized delegate.

2. Proceedings Before Administrative Law Judges

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(5) (the respondent). However, a respondent must have complied with the procedures relating to agency review set forth in § 2560.502c–5 before

[2] To the extent that any provision of Subpart A of 29 CFR Part 18 is not incorporated, the provisions detailed in this section are intended to govern the rules of practice and procedure for administrative hearings relating to civil penalties under ERISA section 502(c)(5).

initiating adjudicatory proceedings under this section. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in § 2560.502c–5(c), and the notice of determination on a statement of reasonable cause, as described in § 2560.502c–5(g), will be issued by PWBA, the agency responsible for administration and enforcement of ERISA section 502(c)(5), in accordance with the service of notice provisions described in § 2560.502c–5(i). Paragraph (c) of § 2570.91 (relating to respondent's answer), paragraph (d) of § 2570.91 (relating to commencement of proceedings), and paragraph (h) of § 2570.91 (relating to administrative hearings) contemplate that adjudicatory proceedings will be initiated with the filing by a respondent of an answer to a notice of the agency's determination on a statement of reasonable cause.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by § 2570.92 of these interim final rules.

In general, the rules in Subpart A of 29 CFR Part 18 concerning the computation of time, pleadings and motions, and prehearing conferences and statements, are adopted in these procedures for adjudications under ERISA section 502(c)(5). The section on the designation of parties (§ 2570.93) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(5).

Section 2590.94 describes the consequences of default. This section provides that if the respondent fails to file an answer to the Department's notice of determination, described in § 2560.502c–5(g), within the 30-day period provided by § 2560.502c–5(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5). Section 2570.94 clarifies that, in the event of such a failure, the assessment of the penalty becomes final.

Section 2590.95 addresses consent orders or settlements. This section permits parties, up to 5 days prior to a scheduled hearing, to request that a hearing be deferred for a reasonable period of time to permit negotiation of a settlement or agreement resolving the whole or any part of the issues relating to assessment of a penalty under ERISA section 502(c)(5). The section also states that the ALJ's decision shall include the terms and conditions of any consent order or settlement that has been agreed to by the parties. That section also provides that the decision of the ALJ, which incorporates such consent order, shall become a final agency action within the meaning of 5 U.S.C. 704. Finally, this section prescribes rules for the content, submission and disposition of any settlement agreement under this section, and a process for settling the whole or any part of the issues where all parties have not consented to the terms of the proposed settlement.

Section 2570.96 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from Subpart A of 29 CFR Part 18 are to be applied in these proceedings under section 502(c)(5). For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under Subpart A of 29 CFR Part 18 concerning the service and answering of such interrogatories shall apply. The procedures under Subpart A of 29 CFR Part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(5).

The section on summary decisions (§ 2570.97) provides the requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(5). The section concerning the decision of the ALJ (§ 2570.98) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in a section 502(c)(5) case shall become the final decision of the Secretary unless a timely appeal is filed.

3. Review by the Secretary

The procedures for appeals of ALJ decisions under ERISA section 502(c)(5) are governed solely by the rules set forth in §§ 2570.99 through 2570.101, and without any reference to the appellate procedures contained in Subpart A of 29 CFR Part 18. Section 2570.99 establishes a 20-day time limit within which such appeals must be filed, the manner in which the issues for appeal are determined, and the procedures for making the entire record before the ALJ available to the Secretary. Section 2570.100 provides that review by the Secretary shall not be on a *de novo* basis, but rather on the basis of the record before the ALJ, and without an opportunity for oral argument. Section 2570.101 sets forth the procedure for establishing a briefing schedule for such appeals, and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to the Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)), all final decisions of the Department under section 502(c)(5) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

D. Interim Rule With Request for Comments

Section 734 of ERISA (formerly section 707) authorizes the Secretary of Labor, consistent with section 104 of HIPAA, to promulgate any such regulations as may be necessary or appropriate to carry out the provisions of Part 7 of ERISA. In addition, this section authorizes the Secretary to promulgate any interim final rules as the Secretary determines are appropriate to carry out Part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. The report required to be filed under section 101(g)(h) is for the purpose of determining the extent to which the requirements of Part 7 are being carried out. Accordingly, the Department has determined that issuing this regulation in interim final form is necessary in order for the Secretary to enforce the reporting requirements of section 101(g)(h) of ERISA and the implementing regulations under § 2520.101–2. Written comments on these interim rules are invited.

E. Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant

regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

F. Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA) requires each Federal agency to perform an initial regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules are being issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this interim final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR § 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants. The Department invites comments on the effect of this interim final rule on small entities.

H. Small Business Regulatory Enforcement Fairness Act

The interim final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

I. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Statutory Authority

The interim final rules set forth herein are issued pursuant to the authority contained in section 502(c)(5) of ERISA (Pub. L. 104–191, 110 Stat. 1936, 1952, 29 U.S.C. 1132(c)(5)), section 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135), and section 734 of ERISA (Pub. L. 104–204, 110 Stat. 2874, 2935, 29 U.S.C. 1194), and under Secretary of Labor's Order 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pension and Welfare Benefits Administration, Reporting and disclosure.

For the reasons set out in the preamble, Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2570—[AMENDED]

1. The authority for Part 2570 is revised to read:

Authority: 29 U.S.C. 1132(c)(2), 1132(c)(5), 1132(i), 1135, 1194, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

2. By adding in the appropriate place in Part 2570 the following new Subpart E:

Subpart E '' Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(5)

Subpart E—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(5)

§ 2570.90 Scope of rules.

The rules of practice set forth in this subpart are applicable to ''502(c)(5) civil penalty proceedings'' (as defined in § 2570.91(n) of this subpart) under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406, 88 Stat. 840–52, as amended by Pub. L. 104–191, 101 Stat. 1936). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges in Subpart A of Part 18 of this title will apply to matters arising under ERISA section 502(c)(5) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.91 Definitions.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title.

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–5(g);

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final Order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(5) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c–5(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(5);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–5(g), the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) 502(c)(5) civil penalty proceeding means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(5) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(5);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official of the Department of Labor; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.92 Service: Copies of documents and pleadings.

For 502(c)(5) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, N.W., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(5) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings*— (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½×11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.93 Parties, how designated.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term *party* wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as ''respondent.'' The Department shall be designated as the ''complainant.''

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may

recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.94 Consequences of default.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondents to file an answer to the notice of determination described in § 2560.502c–5(g) within the 30-day period provided by § 2560.502c–5(h) shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5). Such notice shall then become a final order of the Secretary.

§ 2570.95 Consent order or settlement.

For 502(c)(5) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *In general.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event that a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become a final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether to sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.96 Scope of discovery.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish ''good cause'' for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which ''good cause'' has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 2570.97 Summary decision.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to 2570.99 through

2570.101 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.98 Decision of the administrative law judge.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and an order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(5) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(5) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become a final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.99 through 2570.101.

§ 2570.99 Review by the Secretary

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.100 Scope of review.

The review of the Secretary shall not be a de novo proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.101 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

3. By revising paragraph (a) of § 2570.3 as follows:

§ 2570.3 Service: Copies of documents and pleadings.

* * * * *

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ regional Office to which the proceedings may have been transferred for hearing. Each document filed shall be clear and legible.

* * * * *

Signed at Washington DC, this 4th day of February, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–2937 Filed 2–10–00; 8:45 am]

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Friday,
February 11, 2000

Part IV

Department of Labor

Office of the Secretary

29 CFR Part 44

Process for Electing State Agency Representatives for Consultations With Department of Labor Relating to Nationwide Employment Statistics System; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 44

RIN 1290–AA19

Process for Electing State Agency Representatives for Consultations With Department of Labor Relating to Nationwide Employment Statistics System

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This document provides for the final text of the regulation establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor relating to the development of an annual employment statistics plan and to address other employment statistics issues. Section 15(d)(2) of the Wagner-Peyser Act, as amended by section 309 of the Workforce Investment Act of 1998, requires the Secretary to establish a process for the election of representatives of each of the 10 Federal regions of the Department. Interim final regulations were published on December 18, 1998. This document provides the Department of Labor's response to the comments on the interim final regulations. In addition, minor technical changes are made to the title of the regulation to clarify that the representatives are State agency employment statistics directors, to clarify references to the Federal regions and to the timing of the initial election, and to clarify the title of the Commissioner of Labor Statistics.

DATES: This final rule is effective on March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Cheryl Kerr, Office of the Commissioner of Labor Statistics, Department of Labor, Room 4044, Postal Square Building, 2 Massachusetts Avenue, N.E. Washington, D.C. 20212, 202–691–7808.

SUPPLEMENTARY INFORMATION: On December 18, 1998 interim final regulations and a request for comments on the Process for Electing State Agency Representatives for Consultations with the Department of Labor Relating to the Nationwide Employment Statistics System were published in the **Federal Register** [63 FR 70260]. Interested persons were afforded the opportunity to submit comments to the Bureau of Labor Statistics within 90 days after the publication of the interim final regulations in the **Federal Register**. Two comments were received from State agency employment statistics directors.

The first comment addressed section 44.2(a) of the regulation that provides for staggered election cycles. Under the regulation, after the initial election in which representatives from each of the ten Federal regions were elected, there are staggered elections with one-half of the regions electing representatives each year for bienniel terms. The regulation specifies the regions that are included in each cycle. The preamble to the interim final regulation explained that the purpose of the staggered cycles is to ensure that at least one-half of the representatives will have the benefit of, and expertise resulting from, the previous year's consultations and that this approach provides important continuity to the consultation process while also allowing for appropriate turnover. The preamble also stated that the five regions identified for each respective cycle were selected to ensure that all turnover does not occur in the same part of the country at the same time. The commenter questioned whether the last objective is accomplished by the regulation. Specifically, the commenter noted that three of the five regions specified for the first staggered election cycle (Regions VII, VIII, and X) contain 13 contiguous States and are thus in the same part of the country. The commenter suggested that the five regions be selected by lot rather than be specified in the regulation. The Department of Labor believes that given the configuration of the ten regions, there inherently will be contiguous regions and States in any grouping of five of the regions. Moreover, the suggestion to determine the five regions by lot does not ensure that there will be fewer contiguous regions and States in each cycle. The Department of Labor therefore believes that the regulation sufficiently advances the objectives of the staggering of the election cycles and has not made any changes in response to this comment.

The second comment addressed section 44.3(a) of the regulation relating to the election process. The regulation requires the Commissioner of Labor Statistics to provide a ballot to each employment statistics director containing the names of all the agency directors in the appropriate region. The commenter suggested that, in order to promote informed decisions, the Department of Labor ask each of the directors to prepare a brief summary of their qualifications and interests, including educational background, work history, and the reasons why they are interested in participating in the consultation process, and that the Department include the summary with the ballots. The Department of Labor believes that each agency director should retain the responsibility and discretion to determine the information, if any, to distribute among the other directors for purposes of these elections and how such information is to be disseminated. The Department of Labor therefore does not believe such information should be a subject of these regulations, and has not made any changes in response to this comment.

The Department of Labor has slightly revised the title of the regulation to refer to State agency employment statistics representatives rather than the State employment statistics agency representatives in recognition of the fact that the employment statistics function may only be one component of a State agency.

The Department of Labor has also made two technical changes to section 44.2(a) that do not affect the substance of the regulation. The first change clarifies that the initial election was to have been held not later than February 17, 1999. The interim final regulation provided that the election was to be held within 30 days of the effective date of the rule. Since the interim final regulation took effect on January 19, 1999, that 30–day period ended on February 17. That initial election was held on January 19, 1999. The second change is to identify the regions by number rather than by the location of the principal office. Since some agencies within the Department of Labor have different regional structures with principal offices located in cities other than the cities identified in the interim final regulation, the references to the locations could cause confusion. In order to avoid that result, the regulation has been modified to refer to the regions by the numbers designated for each region in former OMB Circular A–105.

Finally, in section 44.3(a) of the regulation, the Department has modified the title of the Commissioner from the Commissioner of the Bureau of Labor Statistics to the Commissioner of Labor Statistics, which is the statutory title.

The Department of Labor further notes that two elections have been carried out pursuant to the interim final regulation and the Department believes the regulations have effectively addressed the relevant election process issues. It may also be noted that the consultative group elected through this election process, now referred to as the Workforce Information Council, has been meeting with the Department over the past year and recently issued the first annual employment statistics report entitled ''Quality Information, Informed

Choices: New Directions for the Workforce Information System.''

Statutory Authority

The Department of Labor is publishing this regulation under the authority provided in section 506(c)(2) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(2)).

Regulatory Flexibility Act

The Department of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule relates only to State Agency representatives and therefore does not affect businesses, large or small, or any other small entities as defined under the Act. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Executive Order 13132

The interim final regulation was published prior to the August 4, 1999 effective date of the Executive Order. However, the Department has reviewed the final regulation in accordance with Executive Order 13132 relating to Federalism, and has determined that the regulation does not impose unfunded mandates on the States and does not preempt any State laws. In addition, the Department did consult with the representatives of the State agency employment statistics directors regarding this regulation.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 and Congressional Notification

The Department has determined that this final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The Department will submit to each House of Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date of the rule that will note that this rule does not constitute a ''major rule'' for purposes of the Act.

List of Subjects in 29 CFR Part 44

Economic Statistics, Employment.

Signed on this 3rd day of February, 2000.

Alexis M. Herman,

Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor hereby revises part 44 of title 29 of the Code of Federal Regulations to read as follows:

PART 44—PROCESS FOR ELECTING STATE AGENCY EMPLOYMENT STATISTICS REPRESENTATIVES FOR CONSULTATIONS WITH DEPARTMENT OF LABOR

Sec.

Authority: 5 U.S.C. 301; 20 U.S.C. 9276(c); 29 U.S.C. 49 1–2.

§ 44.1 Purpose and scope.

This part contains the regulations of the U.S. Department of Labor establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor for purposes of the development of an annual employment statistics plan and to address other employment statistics issues. The representatives are to be elected by and from the State employment statistics directors affiliated with the State agencies designated to carry out the employment statistics responsibilities under the revised section 15 of the Wagner-Peyser Act (29 U.S.C. 49 1–2), as amended by section 309 of the Workforce Investment Act of 1998. The revised section 15(d)(2) of the Wagner-Peyser Act requires the Secretary to establish a process for the election of such representatives from each of the 10 Federal regions of the Department of Labor.

§ 44.2 Election cycle and tenure of representatives.

(a) *Election cycle.* The States located within each Federal region, as defined in this paragraph, shall elect one representative in accordance with the procedures specified in this part. The initial election for representatives of the States from all 10 Federal regions will be held not later than February 17, 1999. For purposes of this section, the Federal regions shall be the Standard Federal regions identified in former OMB Circular A–105 (issued April 4, 1974). This former Circular is available through the Office of the Commissioner of Labor Statistics, telephone number (202) 691–7808. For the representatives elected from the Federal regions II, IV, VII, VIII, and X, the initial term shall terminate on January 1, 2000. Subsequent elections for representatives from such regions shall be held in the last quarter of 1999 and thereafter biennially within the last calendar quarter of the year. For the representatives from the Federal regions I, III, V, VI, and IX, the initial term shall terminate on January 1, 2001.Subsequent elections for representatives from such regions shall be held within the last calendar quarter of 2000 and thereafter, biennially within the last calendar quarter of the year. After the initial election, the terms of all representatives shall terminate on January 1 of the third calendar year after the preceding scheduled election.

(b) *Tenure.* The terms of the representatives elected in the first election shall commence upon election. The terms of representatives elected in subsequent elections shall commence January 1 of the year following the scheduled election. Representatives may serve for an unlimited number of terms.

§ 44.3 Election process.

(a) *Process.* The Commissioner of Labor Statistics of the U.S. Department of Labor (hereafter referred to as ''the Commissioner'') or his or her designee shall conduct the elections. The Commissioner shall provide a ballot containing the names of the employment statistics directors in the appropriate region to the employment statistics director in each State who is affiliated with the State agency designated pursuant to section 15(e) of the Wagner-Peyser Act. If a State has not

designated an agency, or has not provided the name of the employment statistics director to the Commissioner, the State shall not participate in the election process. Each director may vote for one director to be the regional representative. The Commissioner shall prescribe a time limit that will not be less than one week for the directors to mark and return the ballots. Only votes received by the Commissioner within the prescribed time limit will be counted. The Commissioner will tally the votes from the ballots received within the prescribed time limit and the director receiving the most votes in the region will be the representative for that region. If there is a tie after the first round of votes are counted, the Commissioner shall conduct additional rounds of voting using a ballot containing the names of the directors who tied with the most votes in the previous round until a representative is elected. The Commissioner will prescribe a time limit of not less than one week for each additional round of voting and will tally the votes received within the prescribed time limit. The director with the most votes will be the representative.

(b) *Method of transmission.* The Commissioner may distribute the ballots relating to the election under this part by electronic mail or other methods the Commissioner determines to be appropriate and may specify the methods through which votes are to be cast.

(c) *Vacancies.* If a representative does not complete the term, the Commissioner shall conduct an election to elect a replacement for the remainder of the term using the procedures described in paragraph (a) and (b) of this section.

[FR Doc. 00–2904 Filed 2–10–00; 8:45 am]

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February 11, 2000

Part V

Office of Management and Budget

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: On January 7, 2000, OMB published a notice of availability of and requested comments on its Draft Report to Congress on the Costs and Benefits of Federal Regulations. On January 27, 2000, OMB extended the public comment period to February 22, 2000. In order to assure the broadest possible public access, we are publishing the draft report in this **Federal Register**.

DATES: *Comment Due Date:* February 22, 2000.

ADDRESSES: Comments on this draft report should be addressed to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

You may submit comments by regular mail, by facsimile to (202) 395–6974, or by electronic mail to jmorrall@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: You can review the report on the Internet at: ''*http://www.whitehouse.gov/omb/inforeg/index.html*''. You may also request a copy from John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW, Washington, D.C. 20503. Telephone: (202) 395–7316. E-mail: jmorrall@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On January 7, 2000, OMB published in the **Federal Register** (65 FR 1296) a notice of availability of the Draft Report to Congress on the Costs and Benefits of Federal Regulations and posted it on our web site. The comment period on the draft report was scheduled to end January 21, 2000. Members of the public and Congress asked for additional time and better access to the draft report to allow the public a better opportunity to participate in the comment process. Accordingly, OMB extended the public comment period on the draft report to February 22, 2000 by a notice in the **Federal Register** (65 FR 4447) and with this notice is publishing the entire draft report.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

Draft Report to Congress on the Costs and Benefits of Federal Regulations

Introduction

This is a draft for public comment of the Office of Management and Budget's third report to Congress on the costs and benefits of Federal regulations. [1] This report is required by Section 638(a) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (the Act). The Act requires OMB to submit ''an accounting statement and associated report'' containing:

''(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

(A) in the aggregate;

(B) by agency and agency program; and

(C) by major rule;

''(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

''(3) recommendations for reform.

The Act at Section 638(b), (c), and (d) also specifies how we are to produce the report. We must:

''(b) * * * provide public notice and an opportunity to comment on the statement and report,

''(c) * * * issue guidelines to agencies to standardize (1) measures of costs and benefits and (2) the format of accounting statements, and

''(d) * * * provide for independent and external review of the guidelines and each accounting statement and associated report under this section.''

This draft report provides the public with an opportunity to comment on the ''statement and report'' before we submit it to Congress. We are also asking independent and external experts in the economics of Federal regulation to peer review this draft report. After taking the public comments and peer reviews into account, we will submit the final report to Congress.

In early October 1999 in accordance with the Act, we drafted guidelines for standardizing measures of costs and benefits and the format of the accounting statements. We circulated them for ''independent and external review'' by nine experts in the field of benefit cost analysis. In late October 1999, we sent the guidelines and format to the agencies for their use in reporting the costs and benefits of their regulations. Using this information as well as other information from the agencies and published literature on the costs, benefits, and impacts of Federal regulation, we prepared this draft report.

Chapter I presents our estimates of total annual costs and benefits of Federal regulation and paperwork in the aggregate, and by agency and agency program. It also presents an analysis of the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. Finally, Chapter I presents estimates of the costs and benefits by agency of the major final regulations issued between April 1, 1995 and March 31, 1999 for which we could quantify and monetize impacts.

Chapter II uses agency regulatory impact analyses to present quantitative estimates and qualitative descriptions of the benefits and costs of the 44 major rules issued by Federal agencies for which we concluded review during the 12-month period between April 1, 1998 and March 31, 1999. This ''regulatory year'' is the same period we used for the first two reports.

Chapter III presents our estimates of the costs and benefits of major Federal regulations for which we concluded review during the period April 1, 1995 to March 31, 1999. We included only the regulations for which we had quantitative information on both costs and benefits. For these regulations, we applied a uniform format and standardized measures of costs and benefits to produce estimates that could be more readily compared to each other. This information is used in our aggregate and by-agency estimates of the total annual costs and benefits of Federal regulation in Chapter I.

Chapter IV presents ten recommendations for reform of specific Federal regulations.

Chapter I: Estimating the Total Annual Costs, Benefits, and Impacts of Federal Regulations and Paperwork

I. Overview

This chapter presents estimates of the total annual costs and benefits of Federal rules and paperwork in the aggregate and by agency and agency program as required by Sec 638(a)(1)(A) and (B) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (the Act). In this chapter, we build on the information found in Chapter I of the

[1] This report uses the terms ''rule'' and ''regulation'' interchangeably.

1998 Report to Congress On the Costs and Benefits of Federal Regulations (OMB 1998) by using data and information newly available during 1999. These data include information:

- On costs and benefits of regulations provided by the agencies at our request pursuant to Sec 638(c) of the Act, which requires us to ''issue guidelines to agencies to standardize measures of cost and benefits and the format of accounting statements.''
- From the economic impact analyses that agencies prepare for major rules for which we completed review between April 1, 1998 and March 31, 1999.
- From other government reports and sources on the impacts of regulation and paperwork.

This chapter also analyzes the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth—as required by Sec. 638(a)(2) of the Act.

A. Estimation Problems

This is our third report estimating the total annual costs and benefits of Federal regulations. In our previous two reports (OMB 1997 and 1998), we included a detailed discussion of the methodological problems inherent in such an undertaking.[2] We recognize the importance of providing information to the public on the costs, benefits, and impacts of Federal regulations. Such information is useful for policymakers who are designing new regulations or revising existing ones to make them more cost efficient and fair. Nevertheless, any estimate of total annual costs and benefits can only be rough at best.

It is difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with accuracy. We lack good information about the complex interactions between the different regulations and the economy. A variety of estimation problems for individual and aggregate estimates distort the results in different ways. The difficulty of answering the following questions illustrate these problems:

1. What Baseline Should We Use?

In order to estimate the impact of a regulation, we need to know what would have happened if the regulation had not been issued. In other words, what is the baseline against which costs and benefits should be measured? The baseline problem has several dimensions. First, what happens in the absence of regulation is only an educated guess (since it never happened). Moreover, the greater the regulatory change, the less sure we are of the regulatory benefits and costs. The techniques of applied welfare economics, upon which benefit-cost analysis is based, hold only for marginal changes in economic activities. The larger the changes, the less certain we are of the accuracy of these techniques. Thus, we are more confident in our estimates of the costs and benefits of a small change in the level of automobile emissions than in the costs and benefits of all Clean Air Act regulations and especially in estimates of the total costs and benefits of all regulations issued by the Federal Government since the early 1900s.

Even if we disregard the problem of modeling large changes, significant difficulties remain. It is difficult to determine the baseline for the individual regulations that must be added together to get an aggregate estimate for all regulations. Bias is always a problem when surveying firms and other regulated entities on their expected compliance costs. Both regulators and the regulated may have a stake in the survey results. The problem is potentially greater for prospective studies because they must predict both the baseline and the regulatory effects. Retrospective studies concern themselves only with the baseline. In general, the most precise estimates of the costs and benefits of regulation appear in retrospective studies done by individuals who are not interested parties, but who do seek to maintain their reputations as objective professional analysts.

2. What Costs Should We Measure?

Most of the studies of the costs of regulation produced to date measure the direct expenditures required by regulation. It is hard to do more. Yet, as Cropper and Oates (1992) point out, the cost to society of regulation is properly measured by the change in consumer and producer ''surplus'' [3] associated with the regulation and with any price and/or income changes that may result. At one extreme, ignoring the consumer surplus loss produced by a ban on the sale of a product understates costs to society. Even though compliance costs are zero, consumers are less well off because they can no longer buy the product. At the other extreme, calculating compliance expenditures based on pre-regulation output overstates costs because, if the firm raises prices to cover compliance costs, consumers may shift to other products to compensate partially for the accompanying welfare losses (Cropper and Oats 1992, p. 722). Actually estimating the changes in consumer and producer ''surplus'' caused by regulation requires data that is usually not easily obtained and assumptions that are at best only educated guesses.

3. What Is the Effect of Technological Change?

Many of the studies on which we must rely for cost and benefit estimates are dated. Over time the dynamic nature of the economy may affect the estimation of both benefits and costs. Technological improvements are often cited as the reason that predicted costs of compliance often turn out to be less than actual costs (Office of Technology Assessment 1995). Less well noted, however, is that technological progress also alters the benefits of regulation over time. Medical progress can reduce the future benefits estimated for health, safety and environmental regulations, just as productivity improvements in manufacturing reduce the costs of compliance of some regulations. New drugs or medical procedures can reduce the benefits of regulations aimed at reducing exposure to certain harmful agents such as an infectious disease. Regulations aimed at increasing the energy efficiency of consumer products or buildings may have their expected benefits reduced by new technology that lowers the cost of producing energy.

Technological change also leads directly to higher incomes, which allow people to demand better health and more safety. Business often responds to these demands by providing safer products and workplaces, even in the absence of regulation. Individuals with rising incomes may purchase or donate land to nature conservancies to provide ecological benefits—not to mention tax writeoffs. Yet, as on the cost side, the baseline that we use is generally the status quo, rather than a best guess as to what is likely to happen in the future.

4. How Do We Determine Causality?

It is often difficult to attribute changes in behavior to specific Federal regulations because there can be many other causal factors. In the

[2] The first two reports also provide background information helpful for understanding and placing in context this third report. Together, the reports contain information on the history of regulation and its reform, the Administration's regulatory review program, the basics of economic analysis of regulations, and several case studies comparing various prospective and retrospective analyses of regulations.

[3] Consumer surplus refers to the incremental value of a product, as perceived by the consumer, over and above the price paid by the consumer for that product. Producer surplus refers to the incremental revenue received by the producer of a product over and above the producer's marginal costs of production.

environmental area, there are regulations from several different Federal agencies—the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), the Department of Energy (DOE), the Department of the Interior (DOI), the Department of Commerce (DOC) and the Department of Transportation (DOT) as well as numerous State and local government entities. The tort system, voluntary standards organizations, and public pressure also may cause firms to provide a certain degree of public protection in the absence of Federal regulation. As the General Accounting Office (GAO) points out, determining how much of the costs and benefits of these activities to attribute solely to Federal regulation is a difficult undertaking (GAO 1996).

5. How Do We Assess Older Regulations?

Once regulations are implemented and compliance has begun, public attitudes about the desirability of mandated actions often change. Regulations that were widely questioned before implementation—for example, airbags and family leave—often find wide acceptance afterwards. If the National Highway Traffic Safety Administration's (NHTSA) regulations were eliminated, the automobile companies are not likely to discontinue all the safety features that NHTSA has mandated. Consumers now expect safer cars and seem willing to pay for them. Indeed, they often demand more safety than NHTSA requires.

This same phenomenon is taking place in the environmental area. Environmentally responsible behavior can be good for the bottom line. Rising per capita income and greater acceptance of regulation encourage such behavior, although their precise impact can be hard to measure. Changes in consumer preferences can create a ''rising baseline'' phenomenon, which reduces the ongoing significance of health, safety, and environmental regulations. Estimates of the aggregate regulatory costs and benefits that use a pre-regulation baseline as opposed to a post-regulation baseline may thus overestimate the current costs and benefits of those regulations.

6. Is There an ''Apples and Oranges'' Problem?

Most attempts to summarize the total costs and benefits of Federal regulations have simply added together a diverse set of individual studies. This is an inherently flawed approach. These individual studies vary in the quality, methodology, and type of regulatory impacts they include. They use different assumptions about baselines and time periods, different discount rates, different valuations for the same attribute, and different approaches to dealing with uncertainty. They also are seldom able to analyze the interaction effects among the tens of thousands of regulations. Although we are mindful of, and tried to tried to correct for, these problems in our estimates, our numbers too should be used with caution.

7. Is it Enough To Know the Costs and Benefits?

Accurate assessment of costs and benefits does not necessarily give us information concerning the distribution of such effects. None of the analyses addressed in this report provides quantitative information on the distribution of benefits or costs by income category, geographic region, or any other equity-related factor. As a result, there is no basis for quantifying distributional or equity impacts, which often can be a key reason for regulation.

B. Types of Regulation

Since there are so many different types of Federal regulations, it is useful to break this heterogeneous body up into categories. Three main categories are widely used: social, economic, and process.

- Social Regulation seeks to benefit the public interest in one of two ways. It prohibits firms from producing products in certain ways or with certain characteristics that are harmful to public interests such as health, safety, and the environment. Examples would be OSHA's rule prohibiting firms from allowing in the workplace more than one part per million of Benzene averaged over an eight hour day and the Department of Energy's rule prohibiting firms from selling refrigerators that do not meet certain energy efficiency standards. It also requires firms to produce products in certain ways or with certain characteristics that are beneficial to these public interests. Examples are FDA's requirement that firms selling food products must provide a label with specified information on its package and DOT's requirement that automobiles be equipped with certain kinds of airbags.
- Economic Regulation prohibits firms from charging prices or entering or exiting lines of business that might cause harm to the economic interests of other firms or economic groups. Such regulations usually apply on an industry-wide basis (for example, agriculture, trucking, or communications). In the United States, this type of regulation at the Federal level has often been administered by ''independent'' commissions such as the Federal Communications Commission (FCC), the Securities and Exchange Commission (SEC), or the Federal Energy Regulatory Commission (FERC). This type of regulation can cause economic loss from the higher prices and inefficient operations that often occur when competition is restrained.
- Process Regulations impose administrative or paperwork requirements such as income tax, immigration, social security, food stamps, or procurement forms. Most process costs result from program administration, government procurement, and tax compliance efforts. Social and economic regulation may also impose paperwork costs due to disclosure requirements and enforcement needs. These costs generally appear in the cost for such rules. Procurement costs generally show up in the Federal budget as greater fiscal expenditures.

1. Measuring the Impacts of the Different Types of Regulation

The impacts of regulation have several dimensions. Regulation either increases or decreases the total welfare or well being of society, or redistributes it among different groups. Usually it does both, but the relative degree varies significantly by type of regulation. The public purpose for a regulation usually takes one of two forms: to maximize society's welfare or to redistribute costs and benefits from one group to another.

Social Regulation often seeks to improve the efficiency of the market by correcting what economists call ''market failures''—for example, pollution or public health risks or other unintended consequences on third parties and unequal information between buyers and sellers. Such regulation affects the value of goods and services or welfare enjoyed by society. We measure the impact of a social regulation on society's welfare by estimating its net benefits: social costs subtracted from social benefits.

Redistributive effects or ''income transfers'' should also be measured, noted, and presented to policymakers to help in forming their decision. OMB has issued recommended procedures or ''Best Practices,'' which are particularly useful for estimating the benefits and costs of social regulations. We have described and discussed these procedures in the two previous Reports to Congress on the Costs and Benefits of Federal Regulation. As mentioned above in the introduction, we have provided additional guidance for the agencies for standardizing the measures of costs and

benefits sent us for this and next year's report.

We can divide social regulation into several categories:

Environmental. The true social cost of regulations aimed at improving the quality of the environment is represented by the total value that society places on the goods and services foregone as a result of resources being diverted to environmental protection. (EPA's Cost of a Clean Environment, pp. 1–2, 1–3.) These social costs include the direct compliance costs of the capital equipment and labor needed to meet the standard. They also include the more indirect consumer and producer surplus losses from lost or delayed consumption and production opportunities that result from the higher prices and reduced output needed to pay for the direct compliance costs. In the case of a product ban or prohibitive compliance costs, almost all of the costs represent consumer and producer surplus losses. Most of the cost estimates used in this report do not include consumer and producer surplus losses because it is difficult and often impractical to estimate the demand and supply curves needed to do this type of analysis.

Further indirect effects on productivity and efficiency result from price and output changes that spread through other sectors of the economy. Estimates of compliance costs may understate substantially the true long-term costs of pollution control.[4] The estimates used in this report do not include these indirect and general equilibrium effects.

The benefits of environmental protection are represented by the value that society places on improved health, recreational opportunities, quality of life, visibility, preservation of ecosystems, biodiversity, and other attributes of protecting or enhancing our environment. This value is best measured by society's willingness-to-pay (WTP) for these attributes. Since most types of improvement in environmental quality are not traded in markets, benefits must be estimated by indirect means using sophisticated statistical techniques or ''contingent valuation'' survey methods. Such methods often have more difficulty with benefit estimation than cost estimation.

Other Social. This category of regulation includes rules designed to advance the health and safety of consumers and workers, as well as regulations aimed at promoting social goals such as equal opportunity, equal access to facilities, and protection from fraud and deception. These kinds of regulation, as well as environmental regulation, are concerned with controlling or reducing the harmful or unintended consequences of market transactions. Such consequences as air pollution, occupationally induced illness, or automobile accidents are commonly called ''negative externalities.'' Regulations designed to deal with such externalities are said to ''internalize'' the externalities.

This can be done by regulating the amount of the externality, for example, banning a pollutant or limiting it to a ''safe'' level, or regulating how a product is produced or used. Social regulation may also require the disclosure of information about a product, service, or manufacturing process where inadequate or asymmetric access to information may place consumers, citizens, or workers at a disadvantage. The techniques and methodological concerns involved in the estimation of the social costs and benefits generated by these rules are similar to those involved in the estimation of costs and benefits of environmental regulation discussed above. In the results reported below, we further break ''Other Social'' into three categories: transportation, labor and other regulations. The third category includes food and drug safety, energy efficiency, and quality of medical care regulations.

Economic regulation, especially in the past, often served to transfer income among economic groups. In certain circumstances, however, such as when used to regulate natural monopolies, economic regulation can produce net social benefits. In the last twenty years, deregulation and improvements in technology have reduced entry barriers in a variety of sectors, including transportation, communications, energy, and financial services. To a large degree, economic regulation now serves more and more to promote competition, rather than to protect firms from it. The costs of economic regulation are usually measured by modeling or comparing specific regulated sectors with less regulated sectors, estimating the consumer and producer surplus losses that result from higher prices and lack of service, and estimating the excess costs that may result from the lack of competition. These costs are made up of efficiency losses, or costs to society, and income transfers that one group gains at the expense of another. The Hopkins (92) and Hahn and Hird (91) surveys of regulatory costs found that transfer costs were generally about two to three times the social costs of economic regulation.

Economic regulation may produce net social benefits when natural monopolies are regulated to simulate competition. Although Hahn and Hird (1991) argue that the dollar amounts of such efficiency benefits are small and short lasting in a dynamic and technologically vibrant economy, this is a judgment that is not the result of an empirical study. It is, however, based on the increasingly accepted view that the U.S. economy is becoming more competitive over time, with fewer long-lasting natural monopolies, and on evidence that much economic regulation seeks primarily to enhance one group at the expense of another. Even though monopoly power may not be as long lasting in the ''new economy'' as it was in the old, it can still be important at a given point in time.[5]

Process Regulation mainly serves to collect funds, allocate them among groups of recipients, and establish the conditions under which the government purchases or provides goods and services from and to the public. Although allocating and collecting funds can serve to transfer income between economic groups, the fiscal budget already accounts for these transfers and we do not provide separate estimates below. We do, however, provide estimates of the administrative costs to the public of providing the information needed by the government to collect these funds and provide these services because these estimates are not included in the fiscal budget. These costs are also real burdens to society, not transfers. Government can reduce them streamlining paperwork and red tape.

2. Other Types of Regulatory Impacts

As discussed above, analysts often use estimates of benefits and costs to measure the net impact of regulation on society as a whole. Executive Order No. 12866, Regulatory Planning and Review, issued by President Clinton on September 30, 1993, requires the agencies to measure such impacts (Sect. 1(b)(6)). It also requires that the agencies analyze the effect of a proposed regulation on State, local, and tribal governments and on businesses of differing sizes (Sect.1. (b) ((9) and (11)). As mentioned, Sect. 638 (a)(2) of the Act asks for information on these impacts as well as on wages and economic growth.

Clearly, the impacts of regulation on these sectors are of special interest to policymakers and should be examined

[4] See Jaffe, Peterson, Portney, and Stavins' survey (1995), p. 153.

[5] Note that our definition of economic regulation does not include antitrust activities such as preventing the formation of monopolies through mergers or anticompetitive behavior.

in a full analysis of regulatory impacts. The impacts on State, local, and tribal governments, small businesses, and workers can be measured by distributional analysis, which looks at the transfers of income among groups caused by regulations. Generally the analysis does not make value judgments about the merits of these transfers, leaving that up to policymakers. This approach is in contrast to Benefit Costs Analysis, which generally ignores income transfers and focuses on whether social benefits exceed social costs. Since distributional effects and net benefits are both important, both analyses should be presented to policymakers. Reflecting this philosophy, Executive Order 12866 states that agencies should select regulatory approaches that ''maximize net benefits'' taking into account distributional impacts and equity.

As required by the Act, we present estimates in section II of the costs and benefits of regulation and paperwork, and in section III present what we know about its distributional impacts.

II. The Costs and Benefits of Regulation and Paperwork

Our estimate of the total annual costs and benefits of Federal rules and paperwork starts with our estimates in last year's report. It then adds new information received from the agencies about previous regulations and about new regulations issued during the last year.

A. Social Regulation

1. Total Annual Costs and Benefits

Tables 1, 2, and 3 document how we estimate the total annual monetized costs and benefits of social regulation as of April 1, 1999.[6]

Table 1 relies on estimates from Hahn and Hird (1991) and EPA's Cost of a Clean Environment (1990) and Section 812 Retrospective Report (1997) to present a range of estimates for costs and benefits as of 1988.[7] The estimates of costs range between $84 billion and $140 billion and the benefits between $56 billion and $1.51 trillion annually.

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[6] Our general approach follows the procedures we used in last year's report which discusses them in more detail. (See OMB 1999, pp 13–18).

[7] We discussed in detail the problems and uncertainties associated with these estimates in the two previous reports. We refer the reader to them for more specific information. The estimation problems discussed earlier in this report explain the general estimation problems with these types of aggregate estimates.

Table 1:
Estimates of Total Annual Monetized Costs and Monetized Benefits of Social Regulation as of 1988
(Billions of 1996 dollars)

	Environment			Transportation	Labor	Other	Total
	Hahn & Hird (1991)	EPA	Combined Ranges (a)				
Costs	76 to 99	54(b)	54 to 99	9 to 12	11 to 12(d)	10 to 15	84 to 140
Benefits	22 to 180	1,450(c)	22 to 1,450	34 to 60	not available(e)	not available(e)	56 to 1,510

Sources: Calculations based on information from Hahn and Hird (1991) unless otherwise noted.
(a) Combined ranges from Hahn and Hird (1991) and EPA section 812 retrospective (1997).
(b) Includes water pollution control costs from Cost of Clean (1990), air pollution control costs from EPA's Section 812 Retrospective Report (1997),less adjustments for 1988-1990 overlap.
(c) Benefits from air pollution control only, based on EPA section 812 retrospective (1997).
(d) Based on total expenditures for safety and health rather than regulation-induced expenditures.
(e) Hahn and Hird (1991).
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs that were not quantified.

Table 2:
Estimates of Total Annual Monetized Costs and Monetized Benefits of Social Regulations Issued Between 1987 and First Quarter of 1999
(Billions of 1996 dollars)

Time Period	Environ-mental	Transpor-tation	Labor	Other	Total
Costs	71	6	7	7	92
Benefits	75 to 145	50	28 to 30	55 to 60	208 to 285

Source: The 1987 to 1994 estimates of costs are from OMB (1996) p. A-5. The 1987 to 1994 estimates of benefits are calculated by taking the benefit/cost ratios for the final rules issued between 1990 and 1995 from Hahn (1996) Table 10-4 and applying them to our costs estimates to derive benefit estimates. (See caveats above and the discussion in OMB (1997) for the rationale for this approach). The benefit/cost ratios are 1.4 for environmental, 9.7 for transportation, 3.8 for labor and 7.9 for other social regulations. The estimates for 1995 through the first quarter of 1999 are derived as described in tables 6 through 17. Note that totals may not add because of rounding.
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs that were not quantified.

Table 3:
Estimates of Total Annual Monetized Costs and Monetized Benefits of Social Regulations
(Billions of 1996 dollars as of 1999, Q1)

	Environ-mental	Transpor-tation	Labor	Other	Total
Costs	$124 to 175	$15 to 18	$18 to 19	$17 to 22	$174 to 234
Benefits	$97 to 1,595	$84 to 110	$28 to 30	$55 to 60	$264 to 1,795
Net Benefits(a)	$-78 to 1,471	$66 to 95	$9 to 12	$33 to 43	$30 to 1,621

Source: Tables 1 and 2.
(a) Lower estimate calculated by subtracting high cost from low benefit. Higher estimate calculated by subtracting low cost from high benefit.
Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs that were not quantified.

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The $1.51 trillion upper-range estimate is dominated by EPA's Section 812 Retrospective, which estimates the benefits of the Clean Air Act from 1970 to 1990.

In last year's report we used EPA's upper range estimate for benefits of $3.2 trillion. This estimate engendered considerable public criticism. For example, a panel of regulatory experts convened by GAO expressed considerable scepticism about the magnitude of the estimate (GAO, 1999). EPA points out, however, that this criticism was somewhat misdirected because the $3.2 trillion estimate was the upper bound, 95th percentile estimate generated by the 812 Retrospective Study for the year 1990, a value which EPA itself believes has a very small probability of being the correct estimate (that is, the probability that benefits are equal to or greater than $3.2 trillion is 5%). EPA's expected value for the benefits of 1970 to 1990 programs in the year 1990 is $1.45 trillion (in 1997 dollars). We have amended our report this year to incorporate EPA's expected-value estimate.

GAO (1999) also reported that many of the experts identified specific concerns about some of the assumptions in the Retrospective Report, including: (1) The assumption that air quality would have deteriorated significantly between 1970 and 1990 in the absence of the Clean Air Act, (2) the assumed health effects from limiting exposure to particulate matter, and (3) the methods used to estimate the value that individuals would place on reducing health and mortality risks.[8]

Table 2 provides estimates of the total annual monetized costs and benefits of social regulations issued between 1987 and the first quarter of 1998. As explained in last year's report, the cost estimates are based on the Regulatory Impact Analyses (RIAs) for major rules that agencies submitted to OMB under Executive Order 12866 and its predecessor, Executive Order 12291. To estimate benefits, we used a combination of sources. For the years 1987 to 1995, we assumed that benefits bore the same ratio to our cost estimates for the four categories of regulations shown in Table 2 as they did in a study by Robert Hahn (1996) of major regulations issued between 1990 and mid-1995. We did this because we do not have our own systematic estimates of the benefits for major rules issued before 1995.[9] For the benefit estimates for 1995 through the first quarter of 1999, we used the information from agency-supplied RIAs modified for consistency with Best Practices as appropriate and extended to provide more monetized estimates of benefits and costs using consensus value estimates used by the agencies or found in the literature. These estimates are explained in detail in Chapter III.

Table 3 combines the results from Tables 1 and 2 to present our estimates for the existing costs of social regulation as of the first quarter in 1999. It shows that health, safety and environmental regulation produces between $32 billion and $1,621 billion of net benefits per year.

2. New Estimates for the Clean Air Act Amendments

EPA has also called to our attention its new study, The Benefits and Costs of the Clean Air Act 1990 to 2010, (EPA 1999) to supplement the set of studies that served as the basis for the monetized estimates of benefits and costs in last year's report. This study presents estimates of the benefits and costs of the regulatory program mandated by the 1990 Clean Air Act Amendments (CAAA). It does not, however, cover the benefits and costs of many of EPA's recent major regulations, such as the 1997 final rule setting new Ozone and Particulate Matter National Ambient Air Quality Standards and the recent regional haze final rule. Nor does it include the costs and benefits of the regulations EPA issued during this period pursuant to its Acts other than the CAAA.

EPA's new study estimates total annual costs for the CAAA of about $19 billion and total annual benefits of $71 billion in the year 2000. We note that the adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity of this issue, we provide estimates reflecting two alternative approaches. The first approach—supported by some and preferred by EPA—uses a Value of a Statistical Life (VSL) approach developed for the Clean Air Act Section 812 benefit-cost studies. This VSL estimate of $5.9 million (1997$) was derived from a set of 26 studies identified by EPA using criteria established in Viscusi (1992), as those most appropriate for environmental policy analysis applications.

An alternative, age-adjusted approach is preferred by a number of others both within and outside the Administration. This approach was also developed for the Section 812 studies and addresses concerns with applying the VSL estimate—reflecting a valuation derived mostly from labor market studies involving healthy working-age manual laborers—to PM-related mortality risks that are primarily associated with older populations and those with impaired health status. This alternative approach leads to an estimate of the value of a statistical life year (VSLY), which is derived directly from the VSL estimate. It differs only in incorporating an explicit assumption about the number of life years saved and an implicit assumption that the valuation of each life year is not affected by age.[10] Under this alternative approach, the estimated mean VSLY is $360,000 (1997$); combining this number with a mean life expectancy of 14 years would yield an age-adjusted VSL of $3.6 million (1997$).

Both approaches are imperfect, and raise difficult methodological issues which are discussed in depth in the recently published Section 812 Prospective Study, draft EPA Economic Guidelines, and the peer-review commentaries prepared in support of each of these documents. For example, both methodologies embed assumptions (explicit or implicit) about which there is little or no definitive scientific guidance. In particular, both methods adopt the assumption that the risk versus dollars trade-offs revealed by available labor market studies are applicable to the risk versus dollar trade-offs in the air pollution context.

EPA currently prefers the VSL approach because, essentially, the method reflects the direct application of what EPA considers to be the most reliable estimates for valuation of premature mortality available in the current economic literature. While there are several differences between the labor market studies EPA uses to derive a VSL estimate and the particulate matter air

[8] GAO also points out that these are similar to the concerns expressed by OMB in last year's report. (See OMB 1999, pp. 25–35).

[9] Admittedly this is a crude estimation procedure because Hahn's inventory of rules begins in 1990 and ours extends back to 1987. Consequently, we are assuming that the relationship between costs and benefits that Hahn found for the later period extends back three years. Still, we know of no other approach to fill this gap in the data until RIAs for these years are re-examined. For further details see last year's report (OMB, 1999).

[10] Specifically, the VSLY estimate can be calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy associated with subjects in the labor market studies. The resulting estimate, using a 5 percent discount rate, would be $360,000 per life-year saved in 1997 dollars. This annual average value of a life-year can then be multiplied times the number of years of remaining life expectancy for the affected population.

pollution context addressed here, those differences in the affected populations and the nature of the risks imply both upward and downward adjustments. For example, adjusting for age differences may imply the need to adjust the $5.9 million VSL downward, as would adjusting for health differences; but the involuntary nature of air pollution-related risks and the lower level of risk-aversion of the manual laborers in the labor market studies may imply the need for upward adjustments. In the absence of a comprehensive and balanced set of adjustment factors, EPA believes it is reasonable to continue to use the $5.9 million value while acknowledging the significant limitations and uncertainties in the available literature. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristics of the adult population.

Those who favor the alternative, age-adjusted approach emphasize that the value of a statistical life is not a single number relevant for all situations. Indeed, the VSL estimate of $5.9 million (1997$) is itself the central tendency of a number of estimates of the VSL for some rather narrowly defined populations. When there are significant differences between the population affected by a particular health risk and the populations used in the labor market studies—as is the case here—they prefer to adjust the VSL estimate to reflect those differences. While acknowledging that the VSLY approach provides an admittedly crude adjustment (for age though not for other possible differences between the populations), they point out that it has the advantage of yielding an estimate that is not presumptively biased. Proponents of adjusting for age differences using the VSLY approach fully concur that enormous uncertainty remains on both sides of this estimate —upwards as well as downwards—and that the populations differ in ways other than age (and therefore life expectancy). But rather than waiting for all relevant questions to be answered, they prefer a process of refining estimates by incorporating new information and evidence as it becomes available.

Our estimates of the costs and benefits of environmental regulations in Table 2 above include estimates for CAAA regulations as well as other EPA regulations based on the RIAs EPA prepared at the time. The new CAAA report estimates cannot simply be added to our estimates in Table 2 without adjustments to correct for the overlapping regulations. The CAAA report estimates cannot replace our estimates because they do not include all the regulations EPA issued between 1987 and the first quarter of 1999.

3. Costs and Benefits of Major Rules by Agencies

Table 4 lists the costs and benefits by agency and agency program for major regulations issued over the last four years (April 1, 1995 to March 31, 1999) as estimated by us in Chapter III. During this period, only seven agencies issued major rules. Of these, rules by EPA and HHS had the greatest impact. Those issued by EPA are expected to provide between $17 billion and $84 billion in annual benefits for society at an annual cost of about $28 billion. Those issued by HHS are expected to provide $12 billion to $14 billion in annual benefits at an annual cost of about $800 million.

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Table 4
Estimates of the Total Annual Monetized Benefits and Monetized Costs of Social Regulations by Agency
April 1995 to March 1999
($ millions)

Agency	2000	2005	2010	2015	Annualized	Net Present Value
Dept. of Agriculture						
Benefits	$2,300-4,900	$2,300-4,900	$2,300-4,900	$2,300-4,900	$2,600-5,300	$35,000-72,000
Costs	$1,170-1,190	$1,170-1,190	$1,170-1,190	$1,170-1,190	$1,270-1,290	$17,100-17,400
Dept. of Education						
Benefits	$580-720	$580-720	$580-720	$580-720	$580-720	$8,000-10,000
Costs	$320-540	$320-540	$320-540	$320-540	$320-540	$4,500-7,500
Dept. of Energy						
Benefits	$670	$750-780	$870-940	$970-1,100	$780-840	$11,000-12,000
Costs	$300	$300	$300	$300	$280	$3,900
Dept. of Health and Human Services						
Benefits	$11,000-13,000	$11,000-13,000	$11,000-13,000	$11,000-13,000	$12,000-14,000	$170,000-190,000
Costs	$690-750	$690-750	$680-740	$680-740	$700-770	$10,000-11,000
Dept. of Labor						
Benefits	$390-810	$390-810	$390-810	$390-810	$890-3000	$12,000-41,000
Costs	$230	$230	$230	$230	$250	$3,400
Dept. of Transportation						
Benefits	$1,200-1,700	$2100-2500	$2,100-2,500	$2,100-2,500	$2,000-2,400	$27,000-33,000
Costs	$980-2,200	$1200	$1200	$1,200	$1,200-1,600	$16,000-22,000
Environmental Protection Agency						
Benefits	$4,300-22,000	$4900-25000	$27,000-150,000	$31,000-170,000	$17,000-84,000	$220,000-1,200,000
Costs	$5,500-5,600	$6400-6600	$17,300-17,500	$61,000-61,100	$27,600-27,700	$370,000-380,000

B. Economic Regulation

In our 1997 and 1998 reports, we presented an estimate that the efficiency costs of economic regulation amounted to $71 billion. This is based on an estimate by Hopkins (1992) of $81 billion, which we adjusted downward by $10 billion to account for the deregulation and increase in competition that has occurred in the financial and telecommunications sectors since Hopkins' estimates were made in 1992. In a recent comprehensive report on regulatory reform in the United States by a panel of experts from around world, the OECD estimated that additional reforms in the transportation, energy, and telecommunications sectors would lead to an increase in GDP of 1 percent (OECD, 1999). One percent of the revised first quarter 1999 GDP of $9,073 billion is about $90 billion.

This estimate does not include the costs of international trade protection, which Hopkins included in his estimate of the cost of economic regulation. According to a recent study, the static gains from removing trade barriers existing in 1990 suggested potential gains of about 1.3 percent of GDP (Council of Economic Advisers 1998) or $120 billion for the first quarter of 1999, assuming trade barriers have not changed.[11] These estimates taken together suggest that Hopkins' estimate may be too low.

As we discuss above, economic regulation also results in income transfers from one group to another. In our previous two reports, we used an approach used by Hahn and Hird, and Hopkins, to estimate transfers as a multiple of the efficiency losses. Based on the OECD estimate of efficiency losses, Hopkins' multiple of two (1992) gives rise to an estimate of transfer costs for economic regulation (not counting trade protection) of $180 billion.

C. Process Regulation

The main costs of process regulation consist of the paperwork costs imposed on the public. Sec. 638(a)(1)(A) of the Act calls on OMB to examine the costs and benefits of paperwork. Currently OMB is in the process of revising its guidance on how the agencies should evaluate paperwork burden. OMB issued a notice in the **Federal Register** on October 14, 1999 (64 FR 55788) inviting comments on how best to improve the uniformity, accuracy, and comprehensiveness of agency burden measurement. In this notice, we raise the issue of expanding the reporting of burden to include a monetized value of time, and specifically seek comment on the idea of converting ''burden hours'' into a dollar measure of burden. If a dollar-equivalent value is calculated for burden hours, agencies and OMB could report a single estimate—in dollar terms—of paperwork burden that would combine monetized burden hours with the ''cost burden'' calculation. This would estimate out-of-pocket expenses that are not captured by the time-based measure of burden. While this approach has analytical appeal, it does pose significant methodological challenges.

In addition, IRS has begun work on a new model that will estimate the amount of burden incurred by wage and investment taxpayers as a result of complying with the tax system. IRS has undertaken this study to improve our understanding of taxpayer burdens, to enable us to measure both current and future levels of burden, and to help us isolate the burden of particular tax provisions, regulations, or procedures. To help provide input into our consideration of methods to expand the reporting of burden to include monetized burden hours, the IRS paperwork burden study will include the development of a White Paper on the Monetization of Taxpayer Time. This White Paper will examine the issues surrounding monetization, review existing research, identify lessons learned, and discuss the implications for efforts to monetize taxpayer time.

In our Information Collection Budgets, published annually, we calculate paperwork burden imposed on the public using information agencies give us with their requests for information collection approvals.[12] We present below in Table 5 estimates of paperwork burden in terms of the hours the public devotes annually to gathering and providing information for the Federal government. At a future point in time, we hope to be able to provide information on the dollar costs of paperwork. At present we do not know how to estimate the value of the total annual benefits to society of the information the government collects from the public.

Table 5 shows our estimates of the expected paperwork burden hours for FY 1999 by agency. The total burden of 7,202 million hours is made up of 5,912 million hours for the Treasury Department (82%) and 1,290 million hours for the rest of the Federal government (18%). Using the estimate of the average value of time for the individuals and entities that provide information to the government of $26.50 per hour, which we used in the last two reports, we can get an idea of the dollar burden of paperwork on the public: $190 billion. Note, however, that (1) this is a rough average and should not be applied to individual agencies or agency collections, and (2) this estimate should not be added to our estimates of the costs of regulation because it would result in some double counting. Our estimates of regulatory costs already include paperwork costs. Many paperwork costs arise from regulations, often for enforcement and disclosure purposes.

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[11] The CEA report also went on to state that studies of this type only capture static costs, fail to capture value of foregone varieties of products, quality improvements, and productivity enhancements that would take place in the absence of trade barriers, and thus understate the benefits from trade (CEA 1998, p. 238).

[12] The Paperwork Reduction Act of 1995 requires Federal agencies to seek approval from OMB for each information collection sought from ten or more individuals or entities. As part of that request agencies must estimate the burdens that their individual collection requests impose on the public.

Table 5
Information Collection Budget for FY 1999
(millions of hours)

Department/Agency	Expected Total Hour Burden
Agriculture	83.55
Commerce	10.74
nonperiodic	8.74
periodic	2.25
Defense	105.20
Education	35.89
Energy	3.88
Health and Human Services	164.55
Housing and Urban Development	22.33
Interior	4.98
Justice	37.37
Labor	193.20
State	28.90
Transportation	143.20
Treasury	5,912.44
Veterans Affairs	3.87
EPA	120.61
FAR	20.36
FCC	31.72
FDIC	7.57
FEMA	3.82
FERC	4.23
FTC	126.83
NASA	7.33
NSF	4.41
NRC	9.59
SEC	75.41
SBA	3.71
SSA	21.60
Government Total	7,202.59

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III. The Other Impacts of Federal Regulation

Sec. 638(a)(2) of the Act calls on OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth.

A. Impact on State, Local, and Tribal Government

Over the past four years, four rules have imposed costs of more than $100 million on State, local, and Tribal governments (and thus have been classified as public sector mandates under the Unfunded Mandates Act of 1995).[13] All four of these rules were issued by the Environmental Protection Agency. These four rules are described in greater detail below.

1. EPA's Rule on Standards of Performance for Municipal Waste Combustors and Emissions Guidelines (1995): This rule set standards of performance for new municipal waste combustor (MWC) units and emission guidelines for existing MWCs under sections 111 and 129 of the Clean Air Act [42 U.S.C. 7411, 42 U.S.C. 7429]. The standards and guidelines apply to MWC units at plants with aggregate capacities to combust greater than 35 megagrams per day (Mg/day) (approximately 40 tons per day) of municipal solid waste (MSW). The standards require sources to achieve emission levels reflecting the maximum degree of reduction in emissions of air pollutants that the Administrator determined is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements.

EPA estimated the national total annualized cost for the emissions standards and guidelines to be $320 million per year (in constant 1990 dollars) over existing regulations. EPA estimated the cost of the emissions standards for new sources to be $43 million per year. EPA estimated the cost of the emissions guidelines for existing sources to be $277 million per year. The annual emissions reductions achieved through this regulatory actions include, for example, 21,000 Mg. of SO2; 2,800 Mg. of particulate matter (PM); 19,200 Mg of NOX; 54 Mg. of mercury; and 41 Kg. of dioxin/furans.

2. EPA's Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills (1996): This rule set performance standards for new municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills to implement section 111 of the Clean Air Act. The rule addressed non-methane organic compounds (NMOC) and methane emissions. NMOC include volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. Of the landfills required to install controls, about 30 percent of the existing landfills and 20 percent of the new landfills are privately owned. The remainder are publicly owned. The total nationwide annualized costs for collection and control of air emissions from new and existing MSW landfills are estimated to be $94 million per year annualized over 5 years, and $110 million per year annualized over 15 years.

3. National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts (1998): This rule promulgates health based maximum contaminant level goals (MCLGs) and enforceable maximum contaminant levels (MCLs) for about a dozen disinfectants and byproducts that result from the interaction of these disinfectants with organic compounds in drinking water. The rule will require additional treatment at about 14,000 of the estimated 75,000 residential water systems nationwide. The costs of the rule are estimated at $700 million annually. The quantified benefits estimates range from zero to 9,300 avoided bladder cancer cases annually, with an estimated monetized value of $0 to $4 billion. Possible reductions in rectal and colon cancer and adverse reproductive and developmental effects were not quantified.

4. National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment (1998): This rule establishes new treatment and monitoring requirements (primarily related to filtration) for drinking water systems that use surface water as their source and serve more than 10,000 people. The purpose of the rule is to enhance protection against potentially harmful microbial contaminants. The rule is expected to require treatment changes at about half of the 1,400 large surface water systems, at an annual cost of $300 million. All systems will also have to perform enhanced monitoring of filter performance. The estimated benefits include mean reductions of from 110,000 to 338,000 cases of cryptosporidiosis annually, with an estimated monetized value of $0.5 to $1.5 billion, and possible reductions in the incidence of other waterborne diseases.

While these four EPA rules were the only ones over the past four years to require expenditures by State, local and Tribal governments exceeding $100 million, they were not the only rules with impacts on other levels of governments. For example, 18% of rules listed in the April 1999 Unified Regulatory Agenda cited some impact on State, local or Tribal governments. In general, OMB works with the agencies to ensure that the selection of the regulatory option for all final rules fully complies with the Unfunded Mandates Reform Act. For proposed rules, OMB works with the agencies to ensure that they also solicited comment on alternatives that would reduce costs to all regulated parties, including State, local and Tribal governments.

Agencies have also significantly increased their consultation with State, local, and Tribal governments on all regulatory actions that impact them. For example, EPA and the Department of Health and Human Services engaged in particularly extensive consultation efforts over a wide variety of programs, on both formal unfunded mandates as defined by the Unfunded Mandates Reform Act and other rules with intergovernmental impacts. Agencies also made real progress in improving their internal systems to manage consultations better. This has helped them analyze specific rules in ways that reduce costs and increase flexibility for all levels of government and for the private sector, while implementing important national priorities.

This trend toward increased consultation is expected to continue. On August 5, 1999, President Clinton issued Executive Order 13132 entitled ''Federalism.'' This Executive Order emphasizes consultation with State and local governments and greater sensitivity to their concerns. It also establishes specific requirements that Federal agencies must follow as they develop and carry out policies that affect State and local governments.

B. Impact on Small Business

The President explicitly recognized the need to be sensitive to the impact of regulations and paperwork on small business in his Executive Order 12866,

[13] EPA's proposed rules setting air quality standards for ozone and particulate matter may ultimately lead to expenditures by State, local or tribal governments of $100 million or more. However, Title II of the Unfunded Mandates Reform Act provides that agency statements on compliance with Section 202 must be conducted ''unless otherwise prohibited by law''. The Conference report to this legislation indicates that this language means that the section ''does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule.'' EPA has stated, and the courts have affirmed, that under the Clean Air Act, the air quality standards are health-based and EPA is not to consider costs.

''Regulatory Planning and Review,'' issued September 30, 1993. The Executive Order called on the agencies to tailor their regulations by business size in order to impose the least burden on society, consistent with obtaining the regulatory objectives. It also called for the development of short forms and other streamlined regulatory approaches for small businesses and other entities. The President also supported and signed into law the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In the findings section of SBREFA, Congress stated that ''. . . small businesses bear a disproportionate share of regulatory costs and burdens.'' This is largely attributable to fixed costs—costs that all firms must bear regardless of size. Each firm has to determine whether a regulation applies, how to comply, and whether it is in compliance. As firms increase in size, fixed costs are spread over a larger revenue and employee base resulting in lower unit costs.

This observation is supported by empirical information from a study by the Office of Advocacy of the Small Business Administration (1995). That study found that regulatory costs per employee decline as firm size—as measured by the number of employees per firm—increases. Using data from Hopkins (1995), SBA estimates that the total cost of regulation (environmental, other social, the efficiency costs of economic, the transfer costs of economic, and process regulation) was 50 percent greater per employee for firms with under 20 employees compared to firms with over 500 employees.[14]

These results do not necessarily indicate, however, the extent to which reducing regulatory requirements on small firms would produce more benefits for society at lower costs. That depends in part on the contribution of small firms to the risks being addressed and the benefits produced per dollar of compliance costs by regulating small firms.

C. Impact on Wages

The impact of Federal regulations on wages depends upon how ''wages'' is defined and on the types of regulations involved. If we define ''wages'' narrowly as workers' take-home pay, social regulation may have decreased average wage rates, while economic regulation may have increased them, especially for specific groups. If we define ''wages'' more broadly as the real value or utility of workers' income, the directions of the effects of the two types of regulation are probably reversed.

1. Social Regulation

By a broad measure of welfare, social regulation, regulation directed at improving health, safety, and the environment, can create benefits for workers that outweigh the costs. This is true even if take-home pay does not increase. Compliance costs must be paid for by some combination of workers, business owners, and/or consumers through adjustments in wages, profits, and/or prices. This effect is most clearly recognized for occupational health and safety standards. As one leading text book in labor economics suggests: ''Thus, whether in the form of smaller wage increases, more difficult working conditions, or inability to obtain or retain one's first choice in a job, the costs of compliance with health standards will fall on employees.'' [15]

Viewed in terms of overall welfare, the regulatory benefits of improved health, safety, and environment improvements for workers can outweigh the costs. In the occupational health standards case where the benefits of regulation accrue mostly to workers, workers are likely to be better off if health benefits exceed compliance costs.[16] Although wages may reflect the cost of compliance with health and safety rules, the job safety and other benefits of such regulation can more than compensate for any monetary loss. Workers as consumers benefitting from safer products and cleaner environment may also come out ahead if regulation produces significant net benefits for society.

2. Economic Regulation

For economic regulation, designed to set prices or conditions of entry for specific sectors, these effects may at times be reversed to some degree. Economic regulation can result in increases in income narrowly defined, but decreases in broader measures of income based on utility or overall welfare. Economic regulation is often used to protect industries and their workers from outside competition. Examples include the airline and trucking industries in the 1970's. These wage gains come at a cost in inefficiency from reduced competition, however, which consumers must bear. Moreover, real wages, which depend upon productivity, do not grow as fast without the stimulation of outside competition.[17]

These statements are generalizations for the impact of regulation in the aggregate or by broad categories. Specific regulations can increase or decrease the overall level of benefits accruing to workers depending upon the actual circumstances.

D. Economic Growth

The conventional measurement of GDP does not take into account the market value of improvements in health, safety, and the environment. It does incorporate the direct compliance costs of social regulation. Accordingly, conventional measurement of GDP can suggest that regulation reduces economic growth.[18] In fact, sensible regulation and economic growth are not inconsistent once all benefits are taken into account.

The OECD (1999) estimates that the economic deregulation that occurred in the U.S. over the last 20 years permanently increased GDP by 2 percent. The OECD also estimates that further deregulation of the transportation, energy, and telecommunication sectors would increase U.S. GDP by another 1 percent. Jaffe, Peterson, Portney, and Stavins (1995) summarize their findings after surveying the evidence of the effects of environmental regulation on economic growth as follows: ''Empirical analysis of the productivity effects have found modest adverse impacts of environmental regulation.'' Based on the studies that tried to explain the decline in productivity that occurred in the U.S. during the 1970's, they placed the range attributable to environmental regulation from 8 percent to 16 percent (p. 151). The recent increase in productivity growth in the U.S. coinciding with continued health, safety, and environmental regulation supports the notion that the negative growth effects

[14] SBA estimated that average per employee regulatory costs were $5,106 for firms with under 20 employees compared to $3,404 for firms with over 500 employees. These estimates are based on 1992 conditions using 1995 dollars. Hopkins' own estimates found a 86 percent differential (*See* SBA 1995, pp 39–46).

[15] From Ehrenberg and Smith's Modern Labor Economics, p 279.

[16] Based on a cost benefit analysis of OSHA's 1972 Asbestos regulation by Settle (1975), which found large net benefits, Ehrenberg and Smith cite this regulation as a case where workers' wages were reduced, but they were made better off because of improved health (p. 281).

[17] Winston (1998) estimates that real operating costs declined between 25 and 75 percent in the sectors that were deregulated over the last 20 years—transportation, energy, and telecommunications.

[18] Social regulation reduces growth by diverting resources from the production of goods and services that are counted in GDP to the production or enhancement of ''goods and services'' such as longevity, health, and environmental quality that generally are not counted in GDP.

of social regulation have been relatively small.[19]

As indicated above, conventionally measured GDP growth does not take into account the market value of the improvements in health, safety, and the environment that social regulation has brought us. If even our lower range estimate of the benefits of social regulation ($266 billion) were added to GDP, then the more comprehensive measure of GDP, one that includes the value of nonmarket goods and services provided by regulation, would be about 3 percent greater.[20] Focusing on the effect of social regulation on economic growth is misleading if it does not take into account the full benefits of regulation.

More important than knowing the impact of regulation in general on growth is the impact of specific regulations and alternative regulatory designs on economic growth. As Jaffe *et al.* put it: ''Any discussion of the productivity impacts of environmental protection efforts should recognize that not all environmental regulations are created equal in terms of their costs or their benefits.'' (p. 152).

In this regard, market-based or economic-incentive regulations will tend to be more cost-effective than those requiring specific technologies or engineering solutions. Under market-based regulation, profit-maximizing firms have strong incentives to find the cheapest way to produce the social benefits called for by regulation. How you regulate can go a long way toward reducing any negative impacts on economic growth and increasing the overall long run benefits to society.

Chapter II: Estimates of Benefits and Costs of This Year's ''Major'' Rules

In this chapter, we examine the benefits and costs of each ''major rule,'' as required by section 638(a)(1)(C). We have included in our review those final regulations on which OMB concluded review during the 12-month period April 1, 1998, through March 31, 1999. This ''regulatory year'' is the same calendar period we used for last year's report. It ensures that we cover a full year's regulatory actions as close as practicable to the date our report is due, given the need to compile and analyze data and publish the report for public comment.

The statutory language categorizing the rules we consider for this report differs from the definition of ''economically significant'' in Executive Order 12866 (section 3(f)(1)). It also differs from similar statutory definitions in the Unfunded Mandates Reform Act and subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996—Congressional Review of Agency Rulemaking. Given these varying definitions, we interpreted section 638(a)(1)(C) broadly to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as ''economically significant'' under section 3(f)(1) of Executive Order 12866;
- Rules designated as ''major'' under 5 U.S.C. 804(2) (Congressional Review Act); and
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538).

We also include a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Order 12866. This discussion is based on data provided by these agencies to the General Accounting Office (GAO) under the Congressional Review Act.

During the regulatory year selected, OMB reviewed 44 final rules that met the criteria noted above. Of these final rules, HHS submitted 15; EPA eight; DOT six; USDA four; DOI two; and DOL, DOC, SBA, DOJ, PBGC, and Education, one each. Two were Federal Acquisition Regulations rules. In addition, three agencies—DOL, HHS, and Treasury—worked together to issue one common rule. These 44 rules represent about 18 percent of the 255 final rules reviewed by OMB between April 1, 1998, and March 31, 1999, and less than one percent of the 4,752 final rule documents published in the **Federal Register** during this period. Nevertheless, because of their scale and scope, we believe that they represent the vast majority of the costs and benefits of new Federal regulations during this period.

I. Overview

As noted in Chapter II of last year's report, Executive Order 12866 ''reaffirms the primacy of Federal agencies in the regulatory decisionmaking process'' because agencies are given the legal authority and responsibility for rulemaking under both their organic statutes and certain process-oriented statutes, such as the Administrative Procedure Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act. The Executive order also reaffirms the legitimacy of centralized review generally and, in particular, review of the agencies' benefit cost analyses that are to accompany their proposals. The Executive Order recognizes that in some instances the consideration of benefits or costs is precluded by law. Nevertheless, the Executive Order requires agencies to prepare and submit benefit cost analyses even if those considerations are not a factor in the decisionmaking process. Again, it is the agencies that have the responsibility to prepare these analyses, and it is expected that OMB will review (but not redo) this work. In some cases where the agency has substantial discretion, the costs and benefits identified may be attributable to the regulation. In other cases, where the agency has limited discretion, they may be attributable primarily to the statute.

We found that the benefit cost analyses accompanying the 44 final rules listed in Table 6 vary substantially in type, form, and format of the estimates the agencies generated and presented. For example, agencies developed estimates of benefits, costs, and transfers that were sometimes monetized, sometimes quantified but not monetized, sometimes qualitative, and, most often, some combination of the three.

II. Benefits and Costs of Economically Significant/Major Final Rules (April 1998 to March 1999)

A. Social Regulation

Of the 44 rules reviewed by OMB, 22 are regulations requiring substantial additional private expenditures and/or providing new social benefits,[21] as described in Table 6.[22] EPA issued eight of these rules; HHS and DOT, three each; USDA and DOI, two each; DOC, DOL and Education, one each; and HHS/DOL/Treasury jointly issued one rule. Agency estimates and discussion are presented in a variety of ways, ranging from a purely qualitative discussion,for example, the benefits of the joint HHS/DOL/Treasury rule establishing minimum length-of-stay requirements for mothers and newborns, to a more complete benefit-cost

[19] For the last three years, output per hour in nonfarm business has been growing as rapidly as it did on average during productivity's golden years from 1948 though 1973.

[20] Including the value of increasing life expectancy in the GDP accounts to come up with a more comprehensive measure of the full output of the economy is not as far fetched as it sounds. It was first proposed and estimated in 1973 by D. Usher in ''An Imputation to the Measure of Economic Growth for Changes in Life Expectancy'' NBER Conference on Research in Income and Wealth.

[21] The other 22 are ''transfer'' rules.

[22] Note that all dollar figures Table 6 are in 1996 dollars unless otherwise noted.

analysis,for example, EPA's surface water treatment rule.

1. Benefits Analysis

Agencies monetized at least some benefit estimates in a number of cases including: (1) FDA's $5.7 billion over 5 years from the additional transplants resulting from its transplant-related data rule; (2) EPA's estimate of $1.1 to $4.2 billion per year in terms of better air quality from its ozone transport (NO_X SIP Call) rule; and (3) DOT's $360 million over 10 years in highway safety improvements from its reflector rule for trailers.

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TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Solid Wood Packing Material from China	Not Estimated	Not Estimated	USDA estimates that if left unchecked, these pests have the potential to create losses in excess of $41 billion to forest products, commercial fruit, maple syrup, nursery, and tourist industries. The value of imports from China potentially affected is estimated to range between $12 billion and $16 billion. These estimates represent a maximum cost that would occur only if all these imports were lost to U.S. markets. [63 FR 50107]
USDA	Pseudorabies in Swine	Not Estimated	Not Estimated	USDA authorizes the transfer of $80 million in funds for the accelerated pseudorabies eradication program. USDA has determined that this is the most appropriate time to conduct the program because of the depressed market value of swine. This will mean that the indemnity will be paid at considerable savings. [64 FR 2548]
DOC	Endangered and Threatened Species of Salmonids	Not Estimated	Not Estimated	

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS-FDA	Safety and Effectiveness of New Drugs in Pediatric Patients	$76 million/yr.	$47 million/yr.	"FDA could not develop a quantifiable estimate of the benefits of this regulation, although numerous anecdotal examples illustrate the current health problem. To consider some of these potential benefits, the agency examined hospitalization rates for five serious illnesses (asthma, HIV/AIDS, cancer, pneumonia, and kidney infections) and found significantly higher rates for children than for middle-aged adults...the analysis suggests that a 25 percent reduction in the pediatric/adult hospitalization rate differentials would yield annual [medical cost] savings of $76 million for these five illnesses." [63 FR 66666] "This estimate may represent a lower bound on the benefits to pediatric patients, however, because a number of other disease conditions are also common to children and adults, including such life-threatening conditions as hypertensive disease and renal disease. These pediatric populations would also experience significant benefits from increased safety and access to drug treatments currently available only to adult patient. Moreover, the analysis omits any quantification of benefits from reduced pain and suffering and reduced pediatric mortality. Thus the full benefits of the rule could easily exceed $100 million per year." [63FR 66667]

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS-FDA	Over-The-Counter Drug Labeling	$61-80 million/yr.	$18 million/yr.	Monetized benefits are based on the assumption that the rule will reduce hospitalizations resulting from unintentional misuse of drugs by 5 percent. These benefits include avoided direct cost of hospitalizations, and the associated lost work time. They also include the value of time savings in making drug purchase decisions. "Although the agency cannot quantify the value of health improvements that would result, the agency is confident that more informed OTC drug selection and use produced by this rule will increase consumer satisfaction and, at times, reduce health care costs for additional or supplemental medications, doctor visits, and hospitalizations." [64FR 13277] "The new label format will establish a consistent order of presentation and group similar information (such as ingredients, warnings, and directions) together under relevant headings so that it will be easier for consumers to find and read this information, thus helping to reduce the number of [less severe] adverse event occurrences." [64FR 13277-8]
HHS - HCFA	Provision of Transplant-Related Data	$5.7 billion over the first 5 years	$1.4 billion (direct medical costs) plus 399,000 - 752,000 additional paperwork burden hours over the first 5 years	Benefits and costs based on expectation of 4,118 additional non-renal (primarily liver, heart, pancreas, and lung) transplants over first 5 years and assume an average of 12 life-years gained per transplant at a value of $116,000 per life-year. [63 FR 33873] The agency also expects "this regulation will increase tissue and eye donations as well as organ donations," but did not quantify this effect. [63 FR 33872]

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS/ DOL/ Treasury	Group Health Plans Under the Newborns' and Mothers' Health Protection Act	Not estimated	$130-200 million/yr.	"Many believe that the minimum length-of-stay requirements of 48 hours for a vaginal delivery and 96 hours for a cesarean section will have a positive impact on the overall health and well-being of mothers and newborns. The longer stays will allow health care providers sufficient time to assess their ability to care for the newborn. Although some services performed in an inpatient hospital setting may be effectively provided in other settings, such as clinics or physicians' offices, not all women have access to the full range of appropriate follow-up care. [This law] ensures that many women and newborns with health coverage will now be provided an acceptable level of postpartum care." [63FR 57550-1]
DOI	Migratory Bird Hunting (Early Season Frameworks)	$50-192 million/yr.	Not Estimated	Estimates of individual's willingness to pay for an additional duck indicate the size of this benefit. Willingness to pay for generally improved duck hunting in California was $32. Willingness to pay for taking twice as many birds in Montana was $123. Expanding these estimates nationwide, the welfare benefit of the duck hunting frameworks is on the order of $50 to $192 million.
DOI	Migratory Bird Hunting (Late Season Frameworks)	$50-192 million/yr.	Not Estimated	Estimates of individual's willingness to pay for an additional duck indicate the size of this benefit. Willingness to pay for generally improved duck hunting in California was $32. Willingness to pay for taking twice as many birds in Montana was $123. Expanding these estimates nationwide, the welfare benefit of the duck hunting frameworks is on the order of $50 to $192 million.

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOL	Powered Industrial Truck Operator Training	$136 million/yr. (1993 dollars); 11 fatalities and 6,449 non-lost-workday injuries prevented/yr.	$16.9 million/yr. (1993 dollars)	The monetized portion of benefit estimate includes savings in medical costs, the value of lost output, savings in administrative costs of workers' compensation claims, and indirect costs to employer associated with lost-workday injuries [2,973 per year] only. It also includes reduced property damage and reduced litigation costs. It does not include a monetized estimate of loss of life or pain and suffering of injured workers. [63FR 66265]
Education	Education of Children with Disabilities and Early Intervention Program	$577-723 million/yr.	$324-544 million/yr.	The Department's estimates include the benefits and costs of significant statutory changes to the IDEA that have been incorporated in the rule and the benefits and costs of those non-statutory provisions that could be quantified. Estimated savings are attributable to statutory changes regarding the responsibility of private schools to provide services to children with disabilities and the elimination of unnecessary testing and non-statutory changes that reduce the number of meetings of school personnel that are required for children who are being disciplined and the extent of required services for children who have been suspended. These savings would be offset to some extent by the costs associated with the statutory changes requiring the participation of the child's regular education teacher in certain meetings and requiring alternate assessments for children with disabilities not included in general assessments. these estimates also include the cost of the non-statutory requirement for continued services to students who have exited high school without earning a regular high school diploma.
DOT/ FHWA	Lighting Devices, Reflectors, and Electrical Equipment	$360 million (present value) over 10 years	$228 million over 2-year phase-in period	
DOT/	Child Restraint	36-50 fatalities and	$152 million/yr.	

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOT/ NHTSA	Light Truck CAFÉ Model-Year 2001	Not Estimated	Not Estimated	
EPA	Stage 1 Disinfectants/ Disinfection Byproducts	$0 - 3.88 billion/yr.	$626 - 701 million/yr.	Quantified benefits based on potential reductions in fatal and non-fatal bladder cancers. Non-quantified benefits include possible reductions in colon and rectal cancer and possible reductions in adverse reproductive and developmental effects. Regarding colon and rectal cancer, EPA notes that "...the association...while possibly significant, cannot be determined at this time because of limited data..." [RIA, p 4-14] with regard to reproductive and developmental effects, EPA notes that "...the results are inconclusive and do not support quantification of benefits at this time." [RIA p 4-16]
EPA	Enhanced Surface Water Treatment	$348 - 1,603 million/yr.	$287 - 307 million/yr.	Quantified benefits based on reduced illness and death from avoided cases of cryptosporidiosis only. Non-quantified benefits include reduced risks from other pathogens, and avoided costs of averting behavior (by people who would not have gotten cryptosporidiosis) in a major, well-publicized outbreak, such as occurred in Milwaukee in 1993.
EPA	Petroleum Refining Process Waste	See "Other Information"	$30 million/yr.	Recovered oil benefits were identified and netted out of the cost estimate. Risks to exposed populations were assessed. EPA evaluated fifteen waste streams and listed four of these waste streams that it determined to pose potential risks to exposed populations.

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Nitrogen Oxide Emissions from New Fossil-Fuel-Fired Steam Generating Units	46,000 tons of nitrogen oxides in 2000	$81 million in 2000	"Certain simplifying assumptions, such as no fuel switching in response to the rule, may have resulted in a significant overestimation of these costs." [63FR 49450] "Emissions reductions from replacement boilers are not quantified because of difficulties in characterizing emission rates for the boilers being replaced and the inability of the replacement model to predict selection of different types of boilers in both the baseline case and in response to the regulation. A qualitative analysis of industrial boiler replacement raises the possibility that replacement delay due to the revision may keep some boilers continuing to emit at a higher level than they would in the baseline case where they would be replaced by a lower emitting boiler." [63FR 49450]
EPA	Volatile Organic Compound Emission Standards for Architectural Coatings	113,500 tons of volatile organic compounds per year	$26 million/yr.	"The EPA believes the estimates of total cost and associated economic impacts are conservatively high. Since the best available data on VOC content of architectural coatings is from 1990, and the final rule has VOC content requirements similar to State rules which have been enforced since 1990, the EPA believes the estimated number of reformulations and/or their reformulation cost that result from this action may be overstated in that the compliant products developed by manufacturers to comply with various State rules can be used to meet the requirements of the Federal rule." [63FR 48856]

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99

(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Non-Road Diesel Engines	768,000 tons of nitrogen oxides; 110,000 tons of hydrocarbons; and 87,000 tons of particulate matter annualized emission reductions (1999-2018)	$298 million/yr. annualized (1999-2018)	
EPA	Regional Transport of Ozone (NOx SIP Call)	$1.1-4.2 billion/yr. (1990 dollars) in 2007	$1.7 billion/yr. (1990 dollars) in 2007	Agency estimates based on analysis of 2007. Actual benefits and costs begin in 2003. The monetized benefits reflect improvements in health, crop yields, visibility, and ecosystem protection. "Due to practical analytical limitations, the EPA is not able to quantify and/or monetize all potential benefits of this action." [63FR 57478]
EPA	New Non-Road Non-Handheld Engines At or Below 19 Kilowatts	194,000 tons of combined hydrocarbons plus nitrogen oxides annualized emission reductions (2001-2020); $200 million/yr. annualized fuel savings (2001-2020)	$132 million/yr. annualized (2001-2020)	

TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION

TRANSFER RULES

Dept. of Agriculture (USDA)

Disaster Set-Aside Program
Livestock Assistance Program

Dept. of Health and Human Services (HHS)

Definition of an Unemployed Parent
Clinical Psychologist and Clinical Social Worker Services
Prospective Payment System for Skilled Nursing Facilities
Medicare Coverage and Payment for Bone Mass Measurements
Establishment of the Medicare+Choice Program
Hospital Inpatient Prospective Payment System FY1999
Inpatient Hospital Deductible and Hospital and Extended Care Coinsurance 1999
Monthly Actuarial Rates and Insurance Premium Rate beginning 1/1/99
Physician Fee Schedule for CY1999
Medicare Program: Hospital Wage Data Revisions
Temporary Assistance for Needy Families
Medicare State Allotments for Payment of Medicare Part B Premiums FY 1999

Department of Justice (DOJ)

Immigration Examinations Fee Account

Pension Benefit Guarantee Corporation (PBGC)

Payment of Premiums

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TABLE 6: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/98 - 3/31/99
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
Department of Transportation				
	State Observational Surveys of Belt Use			
	Operation of Motor Vehicles by Intoxicated Persons			
	Incentive Grants for Use of Seat Belts			
Small Business Administration				
	HUBZone Empowerment Contracting Program			
Federal Acquisition Regulation				
	Reform of Affirmative Action In Federal Procurement - Cases 97-004A and B			
	Reform of Affirmative Action In Federal Procurement - Case 97-004C			

Of the 22 (non-transfer) rules listed in Table 6, agencies monetized all the benefit estimates that they were able to quantify in 10 cases. In two cases,

agencies provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important quantified components of benefits. DOL's analysis of its powered industrial truck operator training rule monetized the property damage reductions and out-of-pocket savings associated with injury reductions. DOL, however, did not monetize the other aspects of those injuries (such as pain and suffering) nor the fatalities avoided. EPA's analysis of its non-handheld engines rule monetized the projected fuel savings, but not the estimated hydrocarbon and nitrogen oxide emission reductions.

In four cases, agencies provided quantified benefit estimates but did not provide monetized estimates. These included: (1) DOT's 36 to 50 fatalities and 1,231 to 2,229 injuries prevented per year as a result of child seat rule; (2) EPA's 113,500 tons of volatile organic compound emission reductions per year from its architectural coatings rule; and (3) EPA's annualized emission reductions of 786,000 tons of nitrogen oxides, 110,000 tons of hydrocarbons and 87,000 tons of particulate matter from its nonroad diesel engines rule.

Finally, in six cases, agencies did not report any quantified (or monetized) benefit estimates. In many of these cases, the agency provided a qualitative description of benefits. For example, USDA's wood packing material rule discusses the potential benefits of avoiding the loss of forest products, commercial fruit, maple syrup, and tourism associated with a massive beetle infestation, but does not estimate the probability of such an episode. HHS's analysis of its length-of-stay rule for mothers and newborns includes a qualitative discussion of the rule's positive impact on the overall health and well-being of those affected.

2. Cost Analysis

In 16 of the 22 cases, agencies provided monetized cost estimates. These include such items as HHS's estimate of $1.4 billion over 5 years in direct medical costs for its transplant-related data rule; DOT's estimate of $152 million per year for its child restraint rule; and EPA's estimate of $1.7 billion per year for its ozone transport rule.

For the remaining six rules, the agencies did not estimate costs. These rules included both USDA rules, DOI's two migratory bird hunting rules, DOC's endangered species listing rule and NHTSA's light truck fuel economy rule.

3. Net Monetized Benefits

Ten of the 22 rules provided at least some monetized estimates of both benefits and costs. Of those, eight have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules. For example, DOT's reflector rule will generate an estimated net benefit of about $140 million (present value) over 10 years. EPA's surface water treatment rule will result in an estimated net benefit of between $41 million and $1.3 billion per year. In the case of certain health, safety, and environmental rules, the epidemiologic evidence may indicate, but not establish with certainty, that a causal link exists between the regulated substance and the occurrence of serious illness. Despite the lack of certainty, an agency may decide that regulation is appropriate. In calculating the benefits of such a rule, it is necessary to describe more than one possible outcome, reflecting the current state of knowledge referred to above. Thus, for example, two EPA rules resulted in monetized benefit estimates that included the possibility of both positive or negative net benefits. For example, EPA's disinfection byproducts rule was estimated to generate between $3.18 billion in net benefits and $701 million in net costs. This reflected the lack of certainty as to whether the rule would definitely prevent bladder cancer.

4. Rules With Quantified Effects of Less Than $100 Million per Year

Seven of the rules in Table 6 are classified as economically significant even though their quantified effects do not exceed $100 million in any one year:

USDA—Solid Wood Packing Material from China: Because of a lack of data, the USDA was not able to estimate the benefits and costs associated with regulating solid wood packing materials from China to prevent the importation of wood pests. USDA stated, however, that in the absence of regulatory action, the wood pests could significantly affect the forest products, commercial fruit, maple syrup, nursery, and tourist industries, which have a value of $41 billion.

USDA—Pseudorabies in Swine: In 1999, USDA began implementing a policy to accelerate the Federal eradication program for pseudorabies. Although USDA authorizes a $80 million fund for indemnity payments, the producers of the swine incur other costs such as the cost of cleaning and disinfection. USDA did not estimate these costs because it did not have sufficient information to determine the effect of its actions on the market. USDA believed it was important to act immediately because the severely depressed values of market swine presented a unique opportunity to accelerate significantly pseudorabies eradication in a cost-effective way through depopulation.

DOC—Endangered and Threatened Species of Salmonids: Based upon publicly available information, OMB determined that rules covering these species were major. Citing the Conference Report on the 1982 amendments to the Endangered Species Act, however, the agency did not perform a benefit-cost analysis of the final rules. This report specifically provides that economic impacts cannot be considered in assessing the status of a species.

HHS—Safety and Effectiveness of New Drugs in Pediatric Patients: FDA estimated that this rule will generate benefits of about $76 million per year. FDA also noted, however, that this should be interpreted as a lower bound, since the analysis covered only five illnesses and did not include any estimate for avoided pain and suffering. FDA expressed the belief that the benefits of the rule could easily exceed $100 million.

HHS—Over-The-Counter Drug Labeling: FDA estimated the benefits of this rule at $61 to $80 million/yr. In addition, the agency was unable to quantify several components of benefits that it believes are significant. These include increased consumer satisfaction and a reduction in less-severe adverse health outcomes.

DOT—Light Truck CAFE: For each model year, DOT must establish a corporate average fuel economy (CAFE) standard for light trucks, including sport-utility vehicles and minivans. (DOT also sets a separate standard for passenger cars, but is not required to revisit the standard each year.) For the past four years, however, appropriations language has prohibited NHTSA from spending any funds to change the standards. In effect, it has frozen the light truck standard at its existing level of 20.7 miles per gallon (mpg) and has prohibited NHTSA from analyzing effects at either 20.7 mpg or alternative levels. Although DOT did not estimate the benefits and costs of the standards, the agency's experience in previous years indicates that they may be substantial. Over 5 million new light trucks are subject to these standards each year, and the standard, at 20.7 mpg, is binding on several manufacturers. In view of these likely,

substantial effects, we designated the rule as economically significant even though analysis of the effects was prohibited by law.

EPA—Petroleum Refining Process Waste: EPA estimated the cost of the rule at $20 to $40 million/yr. with an expected value of $30 million/yr. Based on new cost information submitted to EPA after the close of the comment period, OMB determined that the rule as written could impose costs in excess of $100 million/yr. EPA subsequently determined that the higher cost estimates are attributable to waste leachates not intended to be covered by the petroleum listing, and EPA published in the **Federal Register** another rule clarifying that leachates are excluded from this petroleum listing and other listings, and are deferred to Clean Water Act discharge standards. This deferral was in effect when the petroleum rule became effective; consequently, the impacts for the petroleum listing are correctly estimated to be $30 million.

B. Transfer Regulations

Of the 44 rules listed in Table 6, 22 were necessary to implement Federal budgetary programs. The budget outlays associated with these rules are ''transfers'' to program beneficiaries. Of the 22, two are USDA rules that implement Federal appropriations language regarding disaster aid for farmers; eleven are HHS rules that implement Medicare and Medicaid policy; one is an HHS rule providing assistance to needy families; three are DOT rules regarding grants to states to increase seatbelt usage and reduce intoxicated driving; one is an SBA rule regarding contracting; two are Federal Acquisition Regulation rules; one is a DOJ rule regarding immigration policy; and one is a Pension Benefit Guaranty Corporation (PBGC) rule regarding payment of premiums.

1. Major Rules for Independent Agencies

The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA) require the General Accounting Office (GAO) to submit reports on major rules to the Committees of jurisdiction in both Houses of Congress, including rules issued by agencies not subject to Executive Order 12866 (the ''independent'' agencies). We reviewed the information on the costs and benefits of major rules contained in GAO reports for the period of April 1, 1998 to March 31, 1999. GAO reported that four independent agencies issued twenty-four major rules during this period. We list the agencies and the type of information provided by them (as summarized by GAO) in Table 7.

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Table 7
Benefit and Cost Information on Independent Agency Rules

Agency	Total Rules	Rules with Some Information on Costs or Benefits	Monetized Information on Costs	Monetized Information on Benefits
Federal Communications Commission (FCC)	15	0	0	0
Securities and Exchange Commission (SEC)	6	5	2	1
Nuclear Regulatory Commission (NRC)	2	1	0	0
National Credit Union Administration	1	0	0	0
Total	24	6	2	1

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In comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of

the major rules. As Table 7 indicates, six of the twenty-four rules included some discussion of benefits and costs. Only two of the twenty-four regulations had any monetized cost information; only one regulation monetized the benefits associated with the regulation.

The one rule that estimated both benefits and costs was ''Registration Form Used by Open-Ended Management Investment Companies and New Disclosure Option for Open-Ended Management Investment Companies'' by the Securities and Exchange Commission (SEC). This regulation updated the Form N–1A that is used by mutual funds to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933 [63 FR 13916]. SEC estimated the cost associated with the regulation to be approximately $175 million. The estimated benefits for the small funds was $1.8 million. This was the only rule in which the monetized cost exceeded $100 million.

SEC also estimated the cost associated with a regulation amending Rule 17a–5 to require broker-dealers to report their processes for preparing for the Year 2000. The cost was about $66 million. With respect to the remaining regulations, the twenty-two GAO reports contain no information useful for estimating the aggregate costs and benefits.

Chapter III: Estimates of Benefits and Costs of ''Economically Significant'' Rules, April 1995—March 1999

This chapter presents the available benefit and cost estimates for individual rules from April 1, 1995 through March 31, 1999. The summary of agency estimates for final rules from the current year (April 1, 1998 to March 31, 1999) is presented in Chapter II, Table 6. The summary of agency estimates for final rules from the preceding three years (April 1, 1995 to March 31, 1998) is presented in Tables 15 through 17 in the Appendix. In this chapter, we also aggregate benefit and cost estimates for those Federal rules with significant quantified benefit and cost estimates.

In assembling agency estimates of benefits and costs, we have:

(1) Applied a uniform format for the presentation of benefit and cost estimates in order to make agency estimates more closely comparable with each other (for example, providing the benefit and cost streams over time and annualizing benefit and cost estimates); and

(2) Monetized quantitative estimates where the agency has not done so (for example, converting tons of pollutant per year to dollars).

Adopting a format that presents agency estimates so that they are more closely comparable also allows, at least for purposes of illustration, the aggregation of benefit and cost estimates across rules. While we have attempted to be faithful to the respective agency approaches, we caution the reader that agencies have used different methodologies and valuations in quantifying and monetizing effects.

As noted in Chapters I and II, the substantial limitations of available data on the benefits and costs for this set of rules raise significant obstacles to the development of a meaningful aggregate estimate of benefits and costs for even a single year's regulations. For example in many cases, agencies identified important benefits of their rules that were not quantifiable. In such cases, we necessarily excluded them from the monetized estimates we develop in this Chapter. To the extent that these benefits are substantial, the monetized estimates will understate the total value of the benefits. The discussion below addresses other limitations in the data and outlines the steps we have taken in an effort to overcome some of them.

I. Monetized Benefit and Cost Estimates for Individual Rules

We have included in this Chapter only those major rules with quantified estimates of both benefits and costs. These include six rules from the 1995/96 period, 15 rules from the 1996/97 period, 13 rules from 1997/98 period, and 14 from 1998/99. We have excluded 17 rules without quantified estimates of either benefits or costs. (See Table 8.)

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Table 8:
Major Rules Issued Between April 1, 1995 and March 31, 1999
Without Quantified Estimates of Either Benefits or Costs

USDA	1996 Farm Bill Farm Program Karnal Bunt, 1996-1997 Solid Wood Packing Material from China Pseudorabies in Swine
DOC	Endangered and Threatened Species of Salmonids
HHS	Substances Prohibited in Animal Feed, 1997-1998
DOI	Migratory Bird Hunting (Early Season), 1995-1996 Migratory Bird Hunting (Fall Season), 1995-1996 Migratory Bird Hunting (Early Season), 1996-1997 Migratory Bird Hunting (Fall Season), 1996-1997 Migratory Bird Hunting (Early Season), 1997-1998 Migratory Bird Hunting (Fall Season), 1997-1998
EPA	Phase III Land Disposal Restrictions
DOT	Light Truck CAFE, 1995-1996 Light Truck CAFE, 1996-1997 Light Truck CAFE, 1997-1998 Light Truck CAFE, 1998-1999

Ten additional rules listed in Table 9 have also been excluded from further discussion because only quantified cost estimates were available and/or there were only relatively small benefit and cost estimates.

Table 9:
Small or Missing Estimates, Not Evaluated for Aggregate Estimate

USDA	Use of the Term "Fresh" for Poultry Labeling Importation of Sonoran Pork Importation of Argentine Beef
DOC	Encryption Items Transferred from U.S. Munitions List to the Commerce Control List
HHS/DOL/Treasury	Group Health Plans Under the Newborns' and Mothers' Health Protection Act
DOI	Migratory Bird Hunting (Early Season), 1998-1999 Migratory Bird Hunting (Fall Season), 1998-1999
EPA	Lead-Based Paint Activities in Target Housing Toxic Release Inventory: Facility Expansion Petroleum Refining Process Waste

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For some of the remaining rules, agencies quantified estimates of significant effects but did not assign a monetized value to these effects. Some

of the quantified effects—for example, small changes in the risk of premature death or serious injury—are identified as outcomes for a variety of rules. In a number of instances, agencies did assign monetized estimates to these outcomes.

Differences in valuation across rules are often critical, particularly in comparisons of individual rules or programs. The different approaches in the quantification and monetization of these effects across agencies can also result in an ''apples and oranges'' problem in aggregating estimates. Indeed, where effects have been quantified, but not monetized, the different quantitative effects cannot be aggregated because they are not expressed in common units. In order to address this problem, this section takes the additional step of assigning a monetized value in order to provide a more consistent set of estimates in those cases where agencies only quantified significant effects. We have not, however, attempted to quantify or monetize any qualitative effects identified by agencies where the agency did not at least quantify them.

As in the past, agencies continue to take different approaches toward rules that affect small risks of premature death. In some cases, such as FDA's tobacco rule, agencies have quantified and monetized these effects in terms of ''quality-adjusted statistical life years.'' In other cases, such as FRA's roadway worker protection rule, agencies have quantified and monetized these effects in terms of statistical lives. In still other cases, such as DOL's industrial truck operator rule and NHTSA's child restraint rule, agencies have quantified risks of death in terms of life-years or lives, but have not monetized them. Finally, in some cases, such as FDA's animal feed rule, the agency did not develop any quantified estimate of the rule's mortality effects.

Estimates for the value of a statistical life varied across agencies. For the tobacco rule, FDA estimated benefits based on a value of $2.5 million per statistical life. For the roadway worker rule, FRA used $2.7 million per statistical life. For the upper-bound estimates of EPA's ozone and PM NAAQS rules, the agency used $4.8 million per statistical life. For its mammography rule, FDA used $5 million per statistical life.[23] Similarly, agency estimates for the value of a statistical life-year have also varied. FDA used $116,500 per life-year for its tobacco rule. EPA used $120,000 per life-year to produce its lower-bound estimates of benefits in its ozone and PM NAAQS rules. FDA used $368,000 per life-year in its mammography rule. As a general matter, we have deferred to the individual agencies' judgment in this area. In cases where the agency both quantified and monetized fatality risks, we have made no adjustments to the agency's estimate.

In cases where the agency provided only a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates in order to convert these effects into a common unit. For example, in the case of HHS's organ donor rule, the agency estimated, but did not monetize, statistical life-years saved (although it discussed its use of $116,500 per life-year in other contexts). We valued those life-years at $116,500 each. For NHTSA's child restraint rule, we used a value of $2.7 million per statistical life.

In cases where agencies have not adopted estimates of the value of reducing these risks, we used estimates supported by the relevant academic literature. For DOL's industrial truck operator rule, for example, we used $5 million per statistical life.[24] We did not attempt to quantify or monetize fatality risk reductions in cases where the agency did not at least quantify them. As a practical matter, the aggregate benefit and cost estimates are relatively insensitive to the values we have assigned for these rules because the aggregate estimates are dominated by the FDA tobacco rule and EPA's rules revising the ozone and PM primary NAAQS.

II. Valuation Estimates for Other Regulatory Effects

The following is a brief discussion of our valuation estimates for other types of effects which agencies identified and quantified, but did not monetize.

- Injury. For the child restraint rule, we adopted the Department of Transportation approach of converting injuries to ''equivalent fatalities.'' These ratios are based on DOT's estimates of the value individuals place on reducing the risk of injury of varying severity relative to that of reducing risk of death. For the OSHA industrial truck operator rule, we did not monetize injury benefits beyond OSHA's estimate of the direct cost of lost workday injuries.
- Change in Gasoline Fuel Consumption. We valued reduced gasoline consumption at $.80 per gallon pre-tax.
- Reduction in Barrels of Crude Oil Spilled. We valued each barrel prevented from being spilled at $2,000. This reflects double the sum of the most likely estimates of environmental damages plus cleanup costs contained in a recent published journal article (Brown and Savage, 1996).
- Change in Emissions of Air Pollutants. We used estimates of the benefits per ton for reductions in hydrocarbon, nitrogen oxide (NO_X), sulfur dioxide (SO_2), and fine particulate matter (PM) derived from EPA's Pulp and Paper cluster rule (October, 1997). These estimates were obtained from the RIA prepared for EPA's July, 1997 rules revising the primary NAAQS for ozone and fine PM. We note that in this area, as in others, the academic literature offers a number of methodologies and underlying studies to quantify the benefits. There remain considerable uncertainties with each of these approaches. In particular, the derivation and application of per-ton coefficients to value reductions in these pollutants requires significant simplifying assumptions. This is particularly true with respect to the relationship between changes in emitted precursors pollutants and changes in the ambient pollutant concentrations which yield actual benefits. As a result of these simplifying assumptions, the monetary benefit estimates obtained by multiplying tons reduced by benefit estimates per-ton, which we derive from analyses of other rules, should be considered highly uncertain. For each of these pollutants, we used the following values (all in 1996$) for changes in emissions:[25]

Hydrocarbons: $519 to $2,360/ton;
Nitrogen Oxides: $519 to $2,360/ton;
Particulate Matter: $11,539/ton; and
Sulfur Dioxide: $3,768 to $11,539/ton.

EPA has recently recommended that we use an average value of $7,999/ton for nitrogen oxides. EPA based this estimate on the benefits estimate associated with its recent ''Tier 2/gasoline sulfur'' final rule (FR cite, when available). We will be considering whether we should use this or some other value instead of the range we currently use and would welcome comment on the subject.

[23] There is a relatively rich body of academic literature on this subject. The methodologies used and the resulting estimates vary substantially across the academic studies. Based on this literature, agencies have each developed estimates they believe are appropriate for their particular regulatory circumstances.

[24] As a result of OSHA's interpretation of the Supreme Court's decision in the ''Cotton Dust'' case, American Textile Manufacturers Institute v. Donovan, 452 U.S. 491 (1981), OSHA does not conduct cost-benefit analysis or assign monetary values to human lives and suffering.

[25] Where applicable, the lower (higher) end of the value ranges in all of the tables throughout this report reflect the lower (higher) values in these ranges.

In order to make agency estimates more consistent, we developed benefit and cost time streams for each of the rules. Where agency analyses provide annual or annualized estimates of benefits and costs, we used these estimates in developing streams of benefits and costs over time. Where the agency estimate only provided annual benefits and costs for specific years, we used a linear interpolation to represent benefits and costs in the intervening years.[26]

Agency estimates of benefits and costs cover widely varying time periods. While HHS analyzed the effects of providing transplant-related data from 1999 through 2004, other agencies generally examined the effects of their regulations over longer time periods. HHS used a 10-year period for its over-the counter drug labeling rule; DOL also used a 10-year period for its truck operator training rule. EPA's analyses on disinfection and enhanced water treatment rules evaluated the effects over a twenty-year period. The differences in the time frames used for the various rules evaluated generally reflect the specific characteristics of individual rules such as expected capital depreciation periods or time to full realization of benefits.

In order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data. We have not made any changes to agency monetized estimates. To the extent that agencies have adopted different monetized values for effects, for example, different values for a statistical life, or different discounting methods, these differences remain embedded in Tables 10 through 14. Any comparison or aggregation across rules should also consider a number of factors which the presentation in tables 10 through 14 does not address. For example, these rules may use baselines in regulations and controls already in place. In addition, these rules may well treat uncertainty in different ways. In some cases, agencies may have developed alternative estimates reflecting upper- and lower-bound estimates. In other cases, the agencies may offer a midpoint estimate of benefits and costs. In still other cases the agency estimates may reflect only upper-bound estimates of the likely benefits and costs.

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[26] In other words, if hypothetically we had costs of $200 million in 2000 and $400 million in 2020, we would assume costs would be $250 million in 2005, $300 million in 2010, and so forth.

Table 10:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1995 to March 31, 1996
(Millions of $1996, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Health and Human Services (HHS)								
	Hazard Analysis and Critical Control Points (HACCP): Seafood	Benefits	$ 110- 190	$ 110- 190	$ 110- 190	$ 110- 190	$ 110- 200	$ 1,600- 2,800
		Costs	$ 50- 110	$ 50- 110	$ 50- 110	$ 50- 110	$ 50- 120	$ 740- 1,600
Department of Transportation (DOT)								
	Head Impact Protection	Benefits	$ 480- 540	$1,900-2,200	$1,900-2,200	$1,900-2,200	$1,600-1,800	$22,000-25,000
		Costs	$ 170	$ 690	$ 690	$ 690	$ 580	$ 8,000
	Vessel Response Plans	Benefits	$ 40	$ 40	$ 40	$ 40	$ 40	$ 330
		Costs	$ 260	$ 260	$ 260	$ 260	$ 280	$ 3,900
Environmental Protection Agency (EPA)								
	Marine Tank Vessel Loading and Petroleum Refining NESHAP	Benefits	$ 170- 760	$ 170- 760	$ 170- 760	$ 170- 760	$ 170- 760	$ 2,900-10,000
		Costs	$ 120- 160	$ 120- 160	$ 120- 160	$ 120- 160	$ 120- 160	$ 1,700- 2,200
	Air Emissions from Municipal Solid Waste Landfills	Benefits	$ 50- 200	$ 60- 220	$ 70- 230	$ 70- 230	$ 60- 210	$ 820- 2,900
		Costs	$ 90	$ 105	$ 110	$ 110	$ 100	$ 1,400
	Municipal Waste Combustors	Benefits	$ 220- 570	$ 220- 570	$ 220- 570	$ 220- 570	$ 240- 620	$ 3,300- 8,600
		Costs	$ 300	$ 300	$ 300	$ 300	$ 320	$ 4,400

Table 11:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1996 to March 31, 1997
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Agriculture (USDA)								
	Conservation Reserve Program	Benefits	$ 2,000	$ 2,000	$ 2,000	$ 2,000	$ 2,200	$ 30,000
		Costs	$ 900	$ 900	$ 900	$ 900	$ 970	$ 13,000
	Hazard Analysis and Critical Control Points (HAACP): Meat and Poultry	Benefits	$ 70- 2,600	$ 70- 2,600	$ 70- 2,600	$ 70- 2,600	$ 70- 2,800	$ 1,000- 38,000
		Costs	$ 90- 110	$ 90- 110	$ 90- 110	$ 90- 110	$ 100- 120	$ 1,400- 1,700
Department of Health and Human Services (HHS)								
	Food Nutrition Labeling: Small Business Exemption	Benefits	$ 275- 360	$ 275- 360	$ 275- 360	$ 275- 360	$ 300- 390	$ 4,100- 5,400
		Costs	$ 3	$ 2	$ 1	$ 1	$ 2	$ 30
	Restriction on the Sale and Distribution of Tobacco	Benefits	$9,200-10,000	$9,200-10,000	$9,200-10,400	$9,200-10,000	$9,900-11,000	$140,000-150,000
		Costs	$ 180	$ 180	$ 180	$ 180	$ 180	$ 2,500
	Medical Devices: Quality Regulations	Benefits	$ 270- 280	$ 270- 280	$ 270 -280	$ 270- 280	$ 290- 310	$ 4,100- 4,200
		Costs	$ 80	$ 80	$ 80	$ 80	$ 90	$ 1,200
Department of Labor (DOL)								
	Exposure to Methylene Chloride	Benefits	$ 40	$ 40	$ 40	$ 40	$ 90	$ 1,200
		Costs	$ 100	$ 100	$ 100	$ 100	$ 110	$ 1,500

Table 11:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1996 to March 31, 1997
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Transportation (DOT)								
	Airbag Depowering	Benefits	$ 540- 860	$ 0	$ 0	$ 0	$ 170- 270	$ 2,400- 3,800
		Costs	$ 340- 1,600	$ 0	$ 0	$ 0	$ 110- 500	$ 1,500- 7,000
	Roadway Worker Protection	Benefits	$ 30	$ 30	$ 30	$ 30	$ 40	$ 490
		Costs	$ 30	$ 30	$ 30	$ 30	$ 40	$ 480
Environmental Protection Agency (EPA)								
	Accidental Release Prevention	Benefits	$ 170	$ 170	$ 170	$ 170	$ 170	$ 2,400
		Costs	$ 100	$ 100	$ 100	$ 100	$ 100	$ 1,500
	Financial Assurance for Municipal Solid Waste Landfills	Benefits	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
		Costs	-$ 100	-$ 100	-$ 100	-$ 100	-$ 110	-$ 1,500
	Deposit Control Gasoline	Benefits	$ 120- 350	$ 120- 350	$ 120- 350	$ 120- 350	$ 120- 350	$ 1,700- 5,200
		Costs	$ 140	$ 140	$ 140	$ 140	$ 150	$ 2,000
	Acid Rain Phase II NO_x Controls	Benefits	$ 460- 2,100	$ 460- 2,100	$ 460- 2,100	$ 460- 2,100	$ 430- 2,000	$ 6,000- 27,000
		Costs	$ 200	$ 200	$ 200	$ 200	$ 190	$ 2,600
	Federal Test Procedure Revisions	Benefits	$ 140- 820	$ 140- 820	$ 140- 820	$ 140- 820	$ 130- 760	$ 1,700- 11,000
		Costs	$ 200- 250	$ 200- 250	$ 200- 250	$ 200- 250	$ 200- 250	$ 2,600- 3,200

Table 11:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1996 to March 31, 1997
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Environmental Protection Agency (EPA), continued								
	Voluntary Standards for Light-Duty Vehicles (NLEV)	Benefits	$ 50- 220	$ 130- 590	$ 260- 1,200	$ 380- 1,800	$ 230- 1,000	$ 3,100- 14,000
		Costs	$ 600	$ 600	$ 600	$ 600	$ 640	$ 8,920
	Emission Standards for Marine Engines	Benefits	$ 10- 50	$ 90- 390	$ 180- 810	$ 240- 1,100	$ 150- 680	$ 2,100- 9,400
		Costs	$ 50	$ 310	$ 360	$ 320	$ 270	$ 3,760

Table 12:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1997 to March 31, 1998
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Agriculture (USDA)								
	Environmental Quality Incentives Program (EQIP)	Benefits	$ 270	$ 270	$ 270	$ 270	$ 290	$ 4,000
		Costs	$ 180	$ 180	$ 180	$ 180	$ 200	$ 2,700
Department of Health and Human Services (HHS)								
	Organ Procurement and Transplantation Network	Benefits	$ 30- 410	$ 30- 410	$ 30- 410	$ 30- 410	$ 40- 440	$ 510- 6,100
		Costs	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
	Quality Mammography Standards	Benefits	$ 180- 260	$ 180- 260	$ 180- 260	$ 180- 260	$ 200- 280	$ 2,800- 3,900
		Costs	$ 40	$ 40	$ 40	$ 40	$ 40	$ 570
Department of Labor (DOL)								
	Respiratory Protection	Benefits	$ 140- 560	$ 140- 560	$ 140- 560	$ 140- 560	$ 590- 2,700	$ 8,200- 37,000
		Costs	$ 110	$ 110	$ 110	$ 110	$ 120	$ 1,700

Table 12:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1997 to March 31, 1998
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Energy (DOE)								
	Energy Conservation Standards for Refrigerators	Benefits	$ 610	$ 680- 710	$ 790- 860	$ 890- 990	$ 700- 760	$ 9,700- 11,000
		Costs	$ 280	$ 280	$ 280	$ 280	$ 260	$ 3,600
	Energy Conservation Standards for Room Air Conditioners	Benefits	$ 60	$ 70	$ 80	$ 80	$ 80	$ 930- 1,000
		Costs	$ 20	$ 20	$ 20	$ 20	$ 20	$ 300
Environmental Protection Agency (EPA)								
	Emission Standards for New Locomotives	Benefits	$ 250- 970	$ 250- 970	$ 250- 970	$ 250- 970	$ 230- 900	$ 3,200- 13,000
		Costs	$ 90	$ 90	$ 90	$ 90	$ 80	$ 1,900
	Emission Standards for New Highway Heavy-Duty Engines	Benefits	$ 0	$ 310-1,400	$ 310- 1,400	$ 310- 1,400	$ 220- 990	$ 3,000- 14,000
		Costs	$ 0	$ 200	$ 200	$ 200	$ 140	$ 1,900
	Pulp and Paper: Effluent Guidelines	Benefits	$ 10- 160	$ 10- 160	$ 10- 160	$ 10- 160	$ 10- 250	$ 150- 3,400
		Costs	$ 160	$ 160	$ 160	$ 160	$ 250	$ 3,400

Table 12:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1997 to March 31, 1998
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Environmental Protection Agency (EPA), continued								
	Pulp and Paper: National Emission Standards for Hazardous Air Pollutants (NESHAP)	Benefits	-$ 1,000-1,000	-$1,000-1,000	-$ 1,000- 1,000	-$ 1,000- 1,000	-$ 970- 1,100	-$ 13,000- 14,000
		Costs	$ 80	$ 80	$ 80	$ 80	$ 120	$ 1,600
	National Ambient Air Quality Standards (NAAQS): Ozone	Benefits	$ 0	$ 235- 710	$ 470- 2,500	$ 1,800- 10,000	$ 770- 4,300	$ 11,000- 59,000
		Costs	$ 0	$ 470	$ 1,310	$ 11,000	$ 4,500	$ 62,000
	National Ambient Air Quality Standards (NAAQS): Particulate Matter	Benefits	$ 0	$ 0	$22,000-123,000	$24,000-130,000	$11,000-59,000	$148,000-816,000
		Costs	$ 0	$ 0	$ 10,000	$ 44,000	$ 17,000	$ 230,000
	Disposal of Plychlorinated Biphenyls (PCBs)	Benefits	$ 150- 740	$ 150- 740	$ 150- 740	$ 150- 740	$ 160- 790	$ 2,200- 11,000
		Costs	$ 14	$ 14	$ 14	$ 14	$ 14	$ 210

Table 13:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1998 to March 31, 1999
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Education								
	Education of Children with Disabilities and Early Intervention Program	Benefits	$ 580 - 720	$ 580 - 720	$ 580 - 720	$ 580 - 720	$ 580 - 720	$8,000 - 10,000
		Costs	$ 320 - 540	$ 320 - 540	$ 320 - 540	$ 320 - 540	$ 320 - 540	$ 4,500 - 7,500
Department of Health and Human Services (HHS)								
	Safety and Effectiveness of New Drugs in Pediatric Patients	Benefits	$ 74	$ 74	$ 74	$ 74	$ 74	$ 1,000
		Costs	$ 45	$ 45	$ 45	$ 45	$ 45	$ 630
	Over-the-Counter Drub Labeling	Benefits	$ 60 - 78	$ 60 - 78	$ 60 - 78	$ 60 - 78	$ 60 - 78	$ 820 - 1,070
		Costs	$ 18	$ 18	$ 18	$ 18	$ 18	$ 250
	Provision of Transplant-Related Data	Benefits	$ 1,100	$ 1,100	$ 1,100	$ 1,100	$ 1,100	$ 15,000
		Costs	$ 270	$ 270	$ 270	$ 270	$ 270	$ 3,800
Department of Labor (DOL)								
	Powered Industrial Truck Operator Training	Benefits	$ 210	$ 210	$ 210	$ 210	$ 210	$ 2,800
		Costs	$ 18	$ 18	$ 18	$ 18	$ 18	$ 250

Table 13:
Agency Monetized Benefit/Cost Estimates for Final Rules
April 1, 1998 to March 31, 1999
(Millions of 1996$, Rounded to Two Significant Digits)

Agency	Rule	Category	2000	2005	2010	2015	Annualized Value	Net Present Value
Department of Transportation (DOT)								
	Lighting Devices, Reflectors, and Electrical Equipment	Benefits	$ 53	$ 53	$ 53	$ 53	$ 53	$ 680
		Costs	$ 34	$ 34	$ 34	$ 34	$ 34	$ 430
	Child Restraint Anchorage Systems/Child Restraint System	Benefits	$ 110 - 190	$ 110 - 190	$ 110 - 190	$ 110 - 190	$ 110 - 190	$ 1,500-2,700
		Costs	$ 150	$ 150	$ 150	$ 150	$ 150	$ 2,100
Environmental Protection Agency (EPA)								
	Stage 1 Disinfectants/ Disinfection Byproducts	Benefits	$ 0 - 3,700	$ 0 - 3,700	$ 0 - 3,700	$ 0 - 3,700	$ 0 - 3,700	$ 0- 51,000
		Costs	$ 600 - 670	$ 600 - 670	$ 600 - 670	$ 600 - 670	$ 600 - 670	$ 8,200 - 9,200
	Enhanced Surface Water Treatment	Benefits	$330 - 1,500	$330 - 1,500	$330 - 1,500	$330 - 1,500	$330 - 1,500	$ 4,600- 21,000
		Costs	$ 280-300	$ 280-300	$ 280-300	$ 280-300	$ 280-300	$ 3,800 - 4,000
	Nitrogen Oxide Emission from New Fossil-Fuel-Fired Steam Generating Units	Benefits	$ 24 - 110	$ 24 - 110	$ 24 - 110	$ 24 - 110	$ 24 - 110	$ 330 - 1,500
		Costs	$ 81	$ 81	$ 81	$ 81	$ 81	$ 1,100
	Volatile Organic Compound Emission Standards for Architectural Coatings	Benefits	$ 33 - 300	$ 33 - 300	$ 33 - 300	$ 33 - 300	$ 33 - 300	$ 920 - 4,200
		Costs	$ 29	$ 29	$ 29	$ 29	$ 29	$ 400
	Non-Road Diesel Engines	Benefits	$1,500-3,100	$1,500-3,100	$1,500-3,100	$1,500-3,100	$1,500-3,100	$ 20,000-42,000
		Costs	$ 300	$ 300	$ 300	$ 300	$ 300	$ 4,100

Table 14:
Estimates of the Total Annual Monetized Costs and Monetized Benefits of Social Regulations by Year, 1995 to March 1999
($ millions)

	2000	2005	2010	2015	Annualized	Net Present Value
1995-96						
Benefits	$ 1,100- 2,300	$ 2,500- 3,900	$ 2,500- 3,900	$ 2,500- 3,900	$ 2,200- 3,600	$ 31,000- 50,000
Costs	$ 1,300- 1,400	$ 1,800- 1,900	$ 1,800- 1,900	$ 1,800- 1,900	$ 1,700- 1,800	$ 23,000- 25,000
1996-97						
Benefits	$13,000-20,000	$13,000-20,000	$13,000- 21,000	$13,000- 22,000	$ 14,000-22,000	$200,000- 310,000
Costs	$ 2,900- 4,200	$ 2,800- 2,900	$ 2,900- 2,900	$ 2,800- 2,900	$ 3,000- 3,500	$ 42,000- 48,000
1997-98						
Benefits	$ 750- 5,100	$ 1,400- 7,300	$24,000-130,190	$27,000-150,000	$ 13,000-71,000	$180,000- 990,000
Costs	$ 980	$ 1,600	$ 13,000	$ 56,000	$ 23,000	$ 310,000
1998-99						
Benefits	$ 5,700-17,000	$ 5,700-17,000	$ 5,700-17,000	$ 5,700-17,000	$ 5,700-17,000	$ 77,000 - 230,000
Costs	$ 4,300-4,600	$ 4,300-4,600	$ 4,300-4,600	$ 4,300-4,600	$ 4,300-4,600	$ 58,000 - 62,000
Total						
Benefits	$21,000-45,000	$23,000-48,000	$46,000-180,000	$49,000-190,000	$36,000-110,000	$490,000-1,500,000
Costs	$10,000-11,000	$10,600-11,000	$21,000- 22,000	$64,000- 66,000	$ 32,000-33,000	$440,000- 450,000

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III. Aggregation of Benefit and Cost Estimates Across Rules

In Table 14, we aggregated the estimates for individual rules from Tables 10 through 13 by year. This approach yields prospective estimates of the benefits and costs that Federal agencies expected before they issued major rules over the last three years.

We have several important observations to offer on these aggregate estimates. First, the 1996 HHS rule placing restrictions on the sale of tobacco and EPA's 1997 rules revising the NAAQS for ozone and particulate matter dominate the annualized and present value aggregates presented in Table 13. Changes in estimation methodology for these rules, as reflected by the ''plausible range'' adopted by the analysis for the EPANAAQS rules for ozone and particulate matter, will have a marked effect on the aggregated benefit and cost estimates for the rules published over the period from April 1, 1995 to March 31, 1998. By the same token, the aggregate estimates are not very sensitive to different approaches for the remaining rules.

The presentation of these aggregates as annualized benefit and cost streams or as net present value estimates may obscure the actual timing of benefits and costs. In the case of the tobacco rule, for example, the annualized benefit estimates were estimated to be $9 to $10 billion per year. The health benefits associated with successfully reducing the number of young tobacco users, however, will not begin to be realized until after 2015 because of the lag in the noticeable, adverse effects associated with tobacco use. In the case of OSHA's methylene chloride standard, our estimate assumes that the reduction in cancer deaths among exposed workers will not occur until the year 2017, based on an average 20 year lag from exposure to death from cancer.[27]

Similarly, the benefits and costs of the revised ozone and particulate matter NAAQS will only be recognized in the years after 2005. These estimates of ''out-year'' benefits and costs are not certain. EPA will complete its next periodic review of the particulate matter NAAQS, scheduled for 2002, before it begins implementation of the revised particulate matter NAAQS. If this review yields a ''mid-course'' change in the standard, the estimates of benefits and costs could change. EPA has also expressed a continuing concern with the uncertainty of the full attainment cost estimates because EPA believes technological change over the next decade will yield lower-cost approaches that will achieve the revised NAAQS.

As noted above, there are significant methodological issues that need to be confronted when aggregating estimates from a set of individual rules (as presented in tables 10 through 13) in an effort to obtain an estimate of the total benefits and costs of Federal regulation. These issues include:

(1) Adoption of a reasonable, consistent baseline (it is difficult to patch together a sensible baseline from the differing baseline scenarios adopted across rules).

(2) The use of prospective estimates (versus retrospective estimates) of the benefits and costs of regulation, for example, the reliance on prospective estimates may well fail to reflect important changes in taste, innovation by the private sector, or changes in Federal/State/local regulation.

(3) The ''apples and oranges'' problem associated with combining estimates from different studies, including different measures of benefits and costs, double-counting of benefits and costs across related rules, differing approaches to uncertainty such as the use of upper- and lower-bound estimates versus the use of an upper-bound only estimate, and different discount rates.

A final reason that any regulatory accounting effort has limits is the lack of information on the effects of regulations on distribution or equity. None of the analyses addressed in this report provides quantitative information on the distribution of benefits or costs by income category, geographic region, or any other equity-related factor. As a result, there is no basis for quantifying distributional or equity impacts.

Chapter IV: Ten Recommendations for Reform

Sec. 638(a)(3) of the Act requires OMB to submit with its report on the costs and benefits and impacts of Federal regulation ''recommendations for reform.'' In seeking to reform and make more efficient the regulatory process, OMB provides guidance to the agencies in regulatory planning and reviews individual regulations as provided by Executive Order 12866. In so doing, we coordinate policy concerns among the agencies and make numerous recommendations to the agencies to ensure that regulations are consistent with applicable law, the President's priorities, and the regulatory reform principles of Executive Order 12866. The results of those recommendations and their consideration by the agencies during the regulatory decisionmaking process are reflected in final regulations and represent the Administration's regulatory reform efforts.

The most comprehensive accounting of the recommendations and regulations that agencies currently have under consideration is published annually in the Administration's Regulatory Plan. The Regulatory Plan contains a description of the most significant regulatory and deregulatory actions that the agencies plan to issue in either proposed or final form during the next fiscal year. The latest Regulatory Plan was published in the **Federal Register** on November 22, 1999 (64 FR 63883). This year, the Regulatory Plan contains 164 entries from 28 agencies.

The 164 regulations under development in the Regulatory Plan may be viewed as specific recommendations for regulatory improvement or reform based on statutory mandates and the Administration's priorities. Four agencies—USDA, HHS, DOL, and EPA—account for 100 of the 164 initiatives. The following is a sample of the Administration's specific regulatory reform efforts that either increase the regulated entities' flexibility, reduce paperwork burden, clarify the regulated entities' responsibilities with plain language, or substitute performance standards for command-and-control:

- The Food Safety and Inspection Service (FSIS) of USDA is reforming its regulations on imported livestock and poultry products by replacing command-and-control regulations with performance standards, which should benefit consumers and producers and expand international trade.
- FSIS also is reforming its egg product inspection regulations to move from a command-and-control and prior approval systems to a performance standard approach based on the Hazard Analysis and Critical Control Point (HACCP) system and pathogen reduction goals.
- The Food and Drug Administration of HHS is also developing a performance-based HACCP program and a labeling system rather than specifying good manufacturing practices to reduce food-borne pathogens in fruit and vegetable juices.
- HUD is developing four year performance goals for Fannie Mae and Freddie Mac requiring them to purchase mortgages for low and moderate-income housing, special affordable housing, and housing in under served areas. This will increase the number of affordable housing units without significantly

[27] OSHA believes that this assumption is unrealistic and that many workers will avoid incurring cancer before 2017 as a result of the reduction in their methylene exposures brought about by the standard.

crowding out traditional portfolio lending.

- The Bureau of Land Management of the Department of the Interior is revising its Federal oil and gas leasing operations regulations. It will use plain language to improve understanding of the rule. The rule will rely on performance standards, rather than prescriptive requirements, to allow greater flexibility to deal with unique geological or engineering circumstances.
- The Office of Federal Contract Compliance Programs of DOL is reforming its nondiscrimination and affirmative action obligations for government contractors under Executive Order 11246. It plans to reduce paperwork burdens, eliminate unnecessary regulations, and simplify and clarify regulations while improving the efficiency and effectiveness of the contract compliance program.
- The Occupational Safety and Health Administration of DOL is revising its injury and illness reporting and recordkeeping requirements to improve the quality and utility of the data, clarify and simplify guidance, and exempt small businesses in low hazard industries.
- The Federal Railroad Administration of DOT is developing a rule using careful analysis weighing the benefits of reduced collision probabilities with the costs imposed on society to determine when and how train whistles must be sounded at grade crossings.
- EPA is streamlining its requirements for revising operating permits issued by State and local permitting authorities for major sources of air pollution under the Clean Air Act. It will simplify the process for minor new source review actions that have little or no environmental impact.
- EPA is streamlining its public notification regulations for violations of drinking water regulations by public water systems. It will seek to give consumers better and more timely notification of the potential health risks from drinking water when violations occur.

These reforms, as well as many other efforts underway, are significantly improving the lives, health, and well-being of the American public.

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APPENDIX: TABLE 15: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/95 - 3/31/96

(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Use of the Term "Fresh" on the Labeling of Raw Poultry Products	Not estimated	$7 million/yr	USDA estimated transfers from producers to consumers of $75 - 125 million/yr due to potential price decreases of $.04 - .10/lb. The qualitative benefits of the rule are that consumers would be assured that poultry products are not labeled in a misleading or false manner.
HHS	Hazard Analysis and Critical Control Points (HACCP): Seafood ("Safe and Sanitary Processing and Importation of Seafood")	$1.44 - 2.56 billion (present value)	$677 million - $1,490 million (present value)	FDA believes that there may be ``re-engineering" types of benefits associated with these regulations. For both seafood and other foods for which HACCP has been implemented, FDA has received information that firms have found cost-saving innovations in other areas as they implement HACCP. These innovations are considered trade secrets by firms and thus, their description (actual process innovations) and quantification is impossible as firms have not released this data into the public domain. This phenomenon involves unexpected savings and efficiencies as a result of establishing a new system in a processing operation. The majority of firms that have previously instituted HACCP reported that they believed that the advantages they derived from HACCP were worth the costs to them in terms of better control over their operations, better sanitation, and greater efficiencies, such as reduced waste. Virtually all foresaw long-term benefits from operating under HACCP.
DOI	Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOI	Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
DOT	Light Truck CAFE Model-Year 1998	Not Estimated	Not Estimated	None reported
DOT	Head Impact Protection	873 - 1,045 fatalities prevented/yr; 675 - 768 serious head injuries prevented/yr	$640 million/yr	None reported
DOT	Vessel Response Plans	22,000 bbls oil prevented from being spilled/yr	$260 million/yr	The U.S. Coast Guard also stated that there are additional benefits which are not quantifiable. Effectiveness of response operations is enhanced both by the training of citizens and hatchery employees so they may assist in nearshore and onshore operations, and by prepositioning containment and cleanup equipment near where it would be utilized. Also, area drills are expected to improve the proficiency of operations.

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EPA	Land Disposal Restrictions Phase III	Not Estimated	$30 - 220 million/yr	Qualitative discussion, including possible reduction in individual cancer risks; EPA did not provide quantified estimates of benefits because it was not able to identify the magnitude of the exposed population. The RIA reports that benefits would range from very small to zero.
EPA	Marine Tank Vessel Loading and Unloading Operations	40,000 t HC/yr	$60 - 100 million/yr	EPA also reports a reduction of 4,600 tons per year in emissions of toxic pollutants.
EPA	Petroleum Refinery NESHAP	250,000 t HC/yr	$80-100 million/yr	
EPA	Air Emissions from Municipal Solid Waste Landfills	83,000 t HC/yr; 4,250 Kt methane/yr	$100 million/yr	
EPA	Municipal Waste Combustors	20,000 t SO_2/yr; 3,000 t PM/yr; 20,000 t NO_x/yr; 60 t Hg/yr; 800 grams TCDD TEQ /yr	$320 million/yr	
	ABBREVIATIONS: bbls = barrels, CO = carbon monoxide, HC = hydrocarbons, Hg = mercury, kg = kilograms, Kt = kilotons, NO_x = nitrogen oxides, PM = particulate matter, SO_2 = sulfur dioxide, t = tons, TCDD TEQ = 2,3,7,8 tetrachlorodibenzo-p-dioxin toxicity equivalent.			

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
TRANSFER RULES				
Dept. of Agriculture (USDA)				
1995 Upland Cotton Program				
1995 Rice Acreage Reduction Program				
Disaster Payment Program for 1990 and Subsequent Crops - - Tree Assistance Program				
1995 Wheat, Feed Grain, and Oilseed Programs				
General Crop Insurance Regulations (Hybrid Sorghum Seed and Rice)				
Utility Reimbursement Exclusion				
Dept. of Health and Human Services (HHS)				
Changes to Hospital Inpatient Prospective Payment System FY 1996				
Dept. of Justice (DOJ)				
Charging of Fees for Services at Land Border Ports-of-Entry				

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	1996 Farm Bill Farm Program	Not Estimated	Not Estimated	"Net farm income (including crop and livestock sectors) during the 1996-2002 calendar years is expected to be about $15 billion higher under the 1996 Act than under the FY 1997 President's Budget baseline. This largely reflects higher Government payments to farmers under the 1996 Act as production flexibility contract payments exceed projected deficiency payments. Additionally, changes in the timing of payments to farmers provide an additional boost to farm income in the first year of the program--pushing 1996 net income up about $4 billion. However, net farm income is up by less than the increase in Government payments due to changes in the dairy and peanut programs. Crop sector receipts are down slightly under the 1996 Act due to lower plantings and production of the eight major commodities. Livestock sector receipts are lower due primarily to lower dairy sector receipts. Cash production expenses are up slightly due to increases in net cash rents, which offset lower crop production expenses from lower plantings. "Farmland values are higher under the 1996 Act compared with the FY 1997 President's Budget, reflecting the capitalized value of higher income. Land values average about 3 percent higher under the 1996 Act compared with FY 1997 President's Budget estimates. "Consumer costs are expected to be only slightly lower under the 1996 Act. Because grain prices, on average, are expected to be essentially unaffected, no appreciable change in grain-based food product costs, such as cereal and meat products, is expected." 61 FR 37544-5. "Alternatively, the 1996 Act can be compared to a 'no program" baseline. Under the 1996 Act, contract commodity payments represent a large portion of the benefits received by producers and there are few planting restrictions. The major differences between a no-program scenario (if the CRP and export programs were continued) and the 1996 Act are that producers would no longer receive contract commodity payments of about $35.9 billion and would no longer be subject to farm conservation and wetland protection requirements. The loss in farm income would likely entail substantial short-term adjustments and financial stress. However, over the longer term, a no-program scenario is expected to have little or no impact on supply, demand, and prices compared with the 1996 Act for most commodities except for peanuts, sugar, and, in the initial years of the period, dairy.

APPENDIX: TABLE 16: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/96 - 3/31/97
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Conservation Reserve Program	$2 billion/yr, 1997- 2002	$900 million/yr, 1997 - 2002	Other miscellaneous (unquantified) benefits: swimming, boating, wetland conservation, human health impacts, and reduced nutrients in habitats; $5.8 billion/yr in transfers from consumers and taxpayers to farmers.
USDA	Karnal Bunt	Not Estimated	Not Estimated	"This rule is being published on an emergency basis in order to give affected growers the opportunity to make planting decisions for the 1996-97 crop season on a timely basis...This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis, which we will publish in a future Federal Register." 61 FR 52206.

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(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Hazard Analysis and Critical Control Points: Meat and Poultry	$0.71-$26.59 billion present value discounted over 20 years	$0.97-1.16 billion present value discounted over 20 years	"The benefits are based on reducing the risk of foodborne illness due to Campylobacter jejuni/coli, Escherichia coli 0157:H7, Listeria monocytogenes and Salmonella. ... these four pathogens are the cause of 1.4 to 4.2 million cases of foodborne illness per year. FSIS has estimated that 90 percent of these cases are caused by contamination occurring at the manufacturing stage that can be addressed by improved process control. This addressable foodborne illness costs society from $0.99 to $3.69 billion, annually. The high and low range occurs because of the current uncertainty in the estimates of the number of cases of foodborne illness and death attributable to the four pathogens. Being without the knowledge to predict the effectiveness of the requirements in the rule to reduce foodborne illness, the Department has calculated projected health benefits for a range of effectiveness levels, where effectiveness refers to the percentage of pathogens eliminated at the manufacturing stage..." 61 FR 38956. "The link between regulatory effectiveness and health benefits is the assumption that a reduction in pathogens leads to a proportional reduction in foodborne illness. FSIS has presented the proportional reduction calculation as a mathematical expression that facilitates the calculation of a quantified benefit estimate for the purposes of this final RIA. FSIS has not viewed proportional reduction as a risk model that would have important underlying assumptions that merit discussion or explanation. For a mathematical expression to be a risk model, it must have some basis or credence in the scientific community. That is not the case here. FSIS has acknowledged that very little is known about the relationship between pathogen levels at the manufacturing stage and dose, i.e., the level of pathogens consumed." 61 FR 38945-6.

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(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOC	Encryption Items Transferred from the U.S. Munitions List to the Commerce Control List	Not Estimated	$834,000 (govt admin cost FY97), $591,850 (paperwork burden costs)	Unquantified benefits in terms of improved national security, law enforcement and public safety benefits, and economic benefits for industry: "This initiative will support the growth of electronic commerce; increase the security of the global information infrastructure; protect privacy, intellectual property and other valuable information; and sustain the economic competitiveness of U.S. encryption product manufacturers during the transition to a key management infrastructure. 61 FR 68573.
HHS	Food Labeling/ Nutrition Labeling: Small Business Exemption	$275-360 million/yr	$4 million in first year, expected to decline thereafter	None reported.
HHS	Restriction on the Sale and Distribution of Cigarettes and Smokeless Tobacco	$9.2-10.4 billion/yr at 7% discount rate; $28.1-43.2 billion/yr at 3% discount rate	$180 million/yr at 7% discount rate	Unspecified costs of mandatory consumer education program. "These totals do not include the benefits expected from fewer fires (over $160 million annually), reduced passive smoking, or infant death and morbidity associated with mothers' smoking...." "In addition, while FDA could not quantify the benefits that will result from the projected decline in the use of smokeless tobacco, they would be considerable." 61 FR 44396ff.

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HHS	Medical Devices: Quality Systems Regulation	$29 million/yr; 44 deaths avoided/yr; 484 to 677 serious injuries avoided/yr;	$82 million/yr	"The medical device industry would gain substantial economic benefits from the proposed changes to the [Comprehensive Good Manufacturing Practices, "CGMP"] regulation in three ways: Cost savings from fewer recalls, productivity gains from improved designs, and efficiency gains for export-oriented manufacturers who would now need to comply with only one set of quality standards. "These estimates of the public health benefits from fewer design-related deaths and serious injuries represent FDA's best projections, given the limitations and uncertainties of the data and assumptions. The above numbers, however, do not capture the quality of life losses to patients who experience less severe injuries than those reported in [medical device recalls, "MDR's"], who experience anxiety as a result of treatment with an unreliable medical device, or who experience inconvenience and additional medical costs because of device failure. "Medical device malfunctions are substantially more numerous than deaths or injuries from device failures and also represent a cost to society. Malfunctions represent a loss of product and an inconvenience to users and/or patients. Additionally, medical device malfunctions burden medical personnel with additional tasks, such as repeating treatments, replacing devices, returning and seeking reimbursement for failed devices, and providing reports on the circumstances of medical device failures. No attempt was made to quantify these additional costs." 61 FR 52602ff.
DOI	Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
DOI	Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

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DOL	Exposure to Methylene Chloride (MC)	31 cancer cases/yr avoided; 3 deaths/yr avoided from acute central nervous system effects and carboxyhemo-globinemia	$101 million/yr	"MC exposures above the level at which the final rule's STEL is set--125 ppm--are also associated with acute central nervous system effects, such as dizziness, staggered gait, and diminished alertness, all effects that can lead to workplace accidents. OSHA estimates that as many as 30,000 to 54,000 workers will be protected by the final rule's STEL from experiencing CNS effects and episodes of carboxyhemoglobinemia every year. Moreover, exposure to the liquid or vapor forms of MC can lead to eye, skin, and mucous membrane irritation, and these material impairments will also be averted by compliance with the final rule. Finally, contact of the skin with MC can lead to percutaneous absorption and systemic toxicity and thus lead to additional cases of cancer that have not been taken into account in the benefits assessment. " 62 FR 1567-68.
DOT	Airbag Depowering	83-101 fewer fatalities, 5,100 - 8,800 fewer serious injuries over lifetime of one full model-year's vehicles	$0	50 - 431 more fatalities and 171 - 553 more serious/severe chest injuries over lifetime of one full model-year's vehicles; substantial unquantified reduction in minor/moderate injuries.
DOT	Light Truck CAFE Model-Year 1999	Not Estimated	Not Estimated	None reported.
DOT	Roadway Worker Protection	$240 million present value discounted over 10 years	$229 million present value discounted over 10 years	Possible increased capacity of rail lines and improved morale.
EPA	Accidental Release Prevention	$174 million/yr	$97 million/yr	Unspecified value of information made available through disclosure/reporting requirements; efficiency gains, increased technology transfer, indirect cost savings, and increased goodwill; possible damage reductions attributable to offsite consequence analysis and to a reduction in routine emissions.

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(As of date of completion of OMB review)

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EPA	Financial Assurance for Municipal Solid Waste Landfills	$105 million/yr	$0	None reported.
EPA	Deposit Control Gasoline	AVG EMISSION REDUCTIONS PER YEAR, 1997-2001: 25,000 t HC, 474,000 t CO, 95,000 t NOx	AVG COST/YR, 1997 - 2000: $138 million/yr	Fuel economy benefits are also expected as a result of the detergent program, amounting to nearly 450 million gallons during the 1995-2001 period. The savings associated with this fuel economy benefit are expected to partially offset the costs of the program. This rule should result in increased sales and business opportunities within the fuel additive industry. EPA anticipates that this program may result in significant vehicle maintenance benefits. However, due to uncertainties in their magnitude, and for other reasons, they were not considered quantitatively in the analysis.
EPA	Acid Rain Phase II Nitrogen Oxides Emission Controls	EMISSION REDUCTIONS PER YEAR: 890,000 t NOx	$204 million/yr	None reported.
EPA	Federal Test Procedure Revisions	EMISSION REDUCTIONS: In 2005: 30,994 t NMHC 1,937,114 t CO 164,112 t NOx In 2010: 54,892 t NMHC 3,430,769 t CO 290,655 t NOx In 2015: 72,025 t NMHC	$199-245 million/yr	Analysis does not include potential fuel savings of $13.45 discounted over the lifetime of the average vehicle, or about $202 million/yr.

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(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Voluntary Standards for Light-Duty Vehicles	EMISSION REDUCTIONS (tons/ozone season- weekday): In 2005: 279 t NMOG, 3,756 t CO, 400 t NOx In 2007: 399 t NMOG, 5,302 t CO, 600 t NOx In 2015: 778 t NMOG, 9,723 t CO, 1,249 t NOx	$600 million/yr	None reported.
EPA	Lead-Based Paint Activities in Target Housing	Not Estimated	$1.114 billion present value over 50 years discounted at 3%	Will provide consumers with greater assurance that they will be able to purchase abatement services of reliable quality.

ABBREVIATIONS: CO = carbon monoxide, HC = hydrocarbons, Kt = kilotons, NMHC = non-methane hydrocarbons, NMOG= non-methane organic gases, NOx = nitrogen oxides, t = tons.

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Environmental Quality Incentives Program (EQIP)	$2.41 billion (present value) 1997 - 2012	$1.65 billion (present value) 1997 - 2012	"The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity, maintenance of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The off-farm public benefits associated with on-farm conservation efforts are directly dependent upon the on-farm treatment needs and associated benefits. In the case of non-point source pollution from agricultural sources, for instance, public benefits are not achieved until private land user behavior changes and on-site conservation measures are applied. Some of the off-site benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, and reduced flood damages. Additional benefits are from reduced pollution of surface and groundwater from agrochemical management, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat. EQIP encourages participants to adopt a comprehensive approach to solving natural resource and environmental concerns. Off-site benefits for pasture and rangeland and total benefits for animal waste management were not estimated due to unavailability of data." [62 FR 28258-9]

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Importation of Pork from Sonora, Mexico	$0	$0	"Low-impact scenario: 67k hogs (0.02%), assuming supply elasticity = 0.15 and demand elasticity = -0.44. *Economic impacts on farrow-to-finish swine operators:* output decline≈10k-17k hogs (≤0.02%); price decline≈ $0.05/hundredweight liveweight equivalent.; producers' receipts decline ≈ $10.7 million/yr (0.02%) and are transferred to consumers (as consumer surplus) and Mexican producers (as producer surplus). *Economic Impacts on live-hog dealers/transporters:* 86 trips. High-impact scenario: 134.1k hogs (0.02%), assuming supply elasticity = 0.075 and demand elasticity = -0.44. *Economic impacts on farrow-to-finish swine operators:* output decline≈20k-34k hogs (≤0.02%); price decline≈ $0.11/hundredweight liveweight equivalent; producers' receipts decline≈ $24.5 million/yr (0.2%) and are transferred to consumers (as consumer surplus) and Mexican producers (as producer surplus). *Economic impacts on live-hog dealers/transporters:* 125 trips." [62 FR 25441-15443]

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98

(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Importation of Beef from Argentina	$49 million/yr (net of transfers from producers)	$0	"Average wholesale U.S. beef prices estimated to decline by $8.27/MT (from $4,402.17/MT to $4,393.9/MT), less than 0.02%. *Effects on U.S. livestock sector:* producers' receipts decline ≈ $40.15 million/yr and are transferred to consumers (as consumer surplus) and Argentine producers (as producer surplus)." [62 FR 34889-34391] "If Argentina were able to fill its 20 KT quota to the U.S.'s uncooked beef market with nonfed beef product, consumer welfare gains of around $90 million annually are possible. These consumer gains, as well as the likely producer welfare losses, would depend on the type of beef and total quantities received in the U.S. from Argentina. The 20 KT of imports will likely consist mainly of nonfed beef. Consumers would enjoy both lower prices and greater supplies, while producers realize lower returns from lower prices, but not lower quantities produced. These gains, even after taking into account the likely producer losses ... produce a net social welfare gain to the United States of $48.7 million ... "...In the aggregate, producer welfare losses of $40.45 million are distributed between the dairy and beef sectors, the latter sector being composed of cow-calf, feedlot and slaughter operations." [62 FR 34392]

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS	Substances Prohibited in Animal Feed	Not estimated	$53 million/yr	"FDA estimated that, if BSE were to occur in this country, the disease would be associated with approximately $3.8 billion in losses due to the destruction of BSE-exposed livestock and the taking of other measures needed to prevent continued BSE proliferation. While FDA could not quantify the expected additional costs to consumers and producers in the United States that would result from the loss of consumer confidence following a BSE outbreak, the agency found that plausible scenarios indicated that the likely drop in the demand for cattle and beef products could cause billions of dollars in lost market values. In addition, FDA noted, but did not attempt to quantify, the value of the human lives that might be lost or the associated medical treatment costs that might follow a domestic outbreak of BSE." [62 FR 30967] "Additional [benefits] that could not be quantified include the lost human lives and medical treatment costs that could result from BSE-related disease, as well as the consumer and producer losses that would result from the expected decrease in the sales and consumption of beef. Sales of medical products and cosmetics containing cattle-derived components could also be affected." [62 FR 30968]

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(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HHS	Organ Procurement and Transplantation Network	297-1,306 additional "life-years"/yr	$0	HHS recognizes in its analysis the difficulty of quantifying the costs and the benefits of the rule. The rule discusses the current costs of transplantation and the analysis concludes that the final rule will not substantially increase the costs. Regarding benefits, HHS discusses difficulties associated with assigning value to a statistical life when quantifying the benefits for this rule. The rule also discusses the benefits that arise from public oversight and accountability of the organ transplant system, which will preserve public trust and confidence. Also, a system of patient-oriented information of transplant performance will allow easier comparison of transplant center performance and the use of performance goals will create equity in the system.
HHS	Quality Mammography Standards	$182-263 million/yr	$38 million/yr (annualized over 10 years)	FDA states that it is difficult to determine the increase in the quality of mammograms which the final rule will cause. However, FDA calculates the following benefits assuming a 5-percent improvement. This degree of improvement would prevent 75 women per year from dying of breast cancer within a 20-year period. At $5 million per life saved, the discounted value of this outcome would be $234 million per year. In addition, fewer false-positive screens and decreased treatment costs add about $29 million in annual benefits. FDA points out that an improvement of quality as low as 2 percent would result in the benefits outweighing the costs of the final rule.
HHS/ DOL/ Treasury	Mental Health Parity	Not estimated	$464 million/yr	None reported.

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOI	Migratory Bird Hunting (Early Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.
DOI	Migratory Bird Hunting (Late Season Frameworks)	Not Estimated	Not Estimated	DOI reports that duck hunters spend an estimated $416 million/yr; unquantified economic stimulus benefits derived from spending on duck hunting; unquantified benefit of value to hunters (consumer surplus) from more than 11 million hunting days per year; unquantified benefit to bird population by reducing overcrowding and ensuring continued use of resource in future.

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98
(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOL	Respiratory Protection	4,046 injuries and illnesses/yr avoided; 932 deaths/yr avoided	$111 million/yr	"The Agency estimates that the standard will avert between 843 and 9,282 work-related injuries and illnesses annually, with a best estimate (expected value) of 4,046 averted illnesses and injuries annually. This reduction is estimated to save $18.8 to $218 million per year, with a best estimate of $93.9 million per year. In addition, the standard is estimated to prevent between 351 and 1,626 deaths annually from cancer and many other chronic diseases, including cardiovascular disease, with a best estimate (expected value) of 932 averted deaths from these causes." [63 FR 1173]
DOE	Energy Conservation Standards for Refrigerators and Freezers	$7.62 billion (present value) in energy savings for purchases between years 2000 - 2030	$3.44 billion (present value) for purchases between years 2000 - 2030	"The estimated environmental benefits from today's final rule (based on the 1997 AEO fuel prices) are, over the period from 2000 to 2030, a reduction in emissions of NO_X by 1,362 thousand tons (1,501 thousand short tons), a reduction in emissions of CO_2 by 465 Mt (513 million short tons) and a reduction in the cost of the emission controls roughly equivalent to the cost of reducing SO_2 emissions by 1,545 kt (1,703 thousand short tons)." [62 FR 23110-11]
DOE	Energy Conservation Standards for Room Air Conditioners	$740 million (present value) in energy savings for purchases between years 2000 - 2030	$290 million (present value) for purchases between years 2000 - 2030	"The Department projects the standards to save 0.64 quad of energy through 2030, which is likely to result in a cumulative reduction of emissions of approximately 95,000 tons of nitrogen dioxide and 54 million tons of carbon dioxide." [62 FR 50122]
DOT	Light Truck CAFE Model-Year 2000	Not Estimated	Not Estimated	None reported

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Emission Standards for New Locomotives	385,000 tons of nitrogen oxides; 6,000 tons of hydrocarbons; and 4,000 tons of particulate matter annualized emission reductions (2000 - 2040)	$90 million/yr annualized cost (2000 - 2040)	None reported
EPA	Emission Standards for New Highway Heavy-Duty Engines	593,000 tons of nitrogen oxides annualized emission reductions (2004 - 2023)	$196 million/yr annualized cost (2004 - 2023)	None reported

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Pulp and Paper: National Emission Standard for Hazardous Air Pollutants (NESHAP)	-$1.04 - 1.05 billion/yr	$125 million/yr	Benefit estimate includes benefits ranging from $24 - $1,055 million/yr for reductions in emissions of volatile organic compounds and disbenefits ranging from $1 - $1,065 million/yr for increases in emissions of sulfur dioxide and particulate matter. Other quantified (but not monetized) benefits include annual reductions of 139,000 tons of hazardous air pollutants and 79, 000 tons of Total Reduced Sulfur. Other quantified (but not monetized) disbenefits include annual increases of 5,200 tons of nitrogen oxides and 8,700 tons of carbon monoxide. All estimates are for existing sources only; no benefits or costs were estimated for new sources.
EPA	Pulp and Paper Effluent Guidelines	$12 - 57 million/yr	$263 million/yr	Other quantified (but not monetized) annual benefits include lifting of 19 dioxin/furan-related fish consumption advisories; elimination of 3 exceedences of human health ambient water quality concentration standards (AWQC); and elimination of 19 exceedences of aquatic life AWQCs. Unquantified benefits include non-cancer human health effects and improvements in fish and wildlife habitats. All estimates are for existing sources only; no benefits or costs were estimated for new sources.
EPA	Medical Waste Incinerators	$7 million/yr for particulate matter reductions only	$71 - 146 million/yr	EPA states that it cannot quantify or monetize many of the benefits, such as the reduction in the emission of hazardous air pollutants which include cadmium, hydrogen chloride, lead, mercury, and dioxin/furan. In addition, reductions in emissions of sulfur dioxide, carbon monoxide, and nitrogen oxides are expected.

APPENDIX TABLE 17: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/97 - 3/31/98

(As reported by the agency as of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	National Ambient Air Quality Standards (NAAQS): Ozone	$0.4 - 2.1 billion in 2010 (partial attainment) ---------- - $1.5 - 8.5 billion in 2010 (full attainment)	$1.1 billion in 2010 (partial attainment) ---------- - $9.6 billion in 2010 (full attainment)	Benefit estimates do not include anticipated reductions in harmful effects in the following human health areas: airway responsiveness, pulmonary inflammation, increases susceptibility to respiratory infection, acute inflammation and respiratory cell damage, and chronic respiratory damage/premature aging of the lungs. Benefits also do not include effects in the following welfare areas: ecosystem effects in "Class I" areas (e.g., national parks), damage to urban ornamentals, reduced forestry yields, damage to ecosystems, materials damage, nitrates in drinking water, and brown clouds.
EPA	National Ambient Air Quality Standards (NAAQS): Particulate Matter	$19 - 104 billion in 2010 (partial attainment) ---------- $20 - 110 billion/yr (full attainment)	$8.6 billion in 2010 (partial attainment) ---------- $37 billion/yr (full attainment)	Benefit estimates do not include anticipated reductions in harmful effects in the following human health areas: pulmonary function, morphological changes, altered host defense mechanisms, cancer, other chronic respiratory diseases, infant mortality, and mercury emissions. Benefits also do not include effects in the following welfare areas: materials damage (other than cleaning costs), damage to ecosystems, nitrates in water, and brown clouds.
EPA	Toxic Release Reporting ("Community Right-to-Know")	Not estimated	$226 million in the first year and $143 million/yr in subsequent years	This rule will make available to the public information on releases and transfers from these additional facilities of chemicals listed under the Toxic Release Inventory Program.
EPA	Disposal of Polychlorinated Biphenyls (PCBs)	Net cost savings of $150 - $740 million/yr	$14 million/yr	None reported.

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AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
			TRANSFER RULES	
Dept. of Agriculture (USDA)				
	Improved Targeting of Day Care Home Reimbursements			
	Peanut Poundage Quota Regulations			
Dept. of Health and Human Services (HHS)				
	Coverage of Personal Care Services			
	Inpatient Prospective Payment Systems for 1998			
	Physician Fee Schedule for 1998			
	Limit on the Valuation of a Depreciable Capital Asset			
	Salary Equivalency Guidelines for Physical Therapy			
	Limitations on Home Health Agency Costs			
	State Allotments for Payment of Medicare Part B Premiums for 1998			
Dept. of Justice (DOJ)				
	Affidavits of Support on Behalf of Immigrants			
Dept. of Veterans Affairs (DVA)				
	Schedule for Rating Disabilities, The Cardiovascular System			

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Federal Register

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February 11, 2000

Part VI

Federal Emergency Management Agency

44 CFR Part 209

Hurricane Floyd Property Acquisition and Relocation Grants; Interim Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 209

RIN 3067–AD06

Hurricane Floyd Property Acquisition and Relocation Grants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule with request for comments.

SUMMARY: We, FEMA, announce the immediate availability of $215 million in grants provided under the Consolidated Appropriations Act for FY 2000, for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

DATES: *Effective Date:* This interim final rule is effective February 11, 2000.

Comments: We invite comments on this interim final rule, which should be received by April 11, 2000.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104, or (email) robert.shea@fema.gov.

SUPPLEMENTARY INFORMATION: This interim final rule provides guidance on the administration of grants made under title I, chapter 2 of the Consolidated Appropriations Act for FY 2000, (''Act''), Pub.L. 106–113. The Act provides $215 million for the acquisition and relocation of properties affected by Hurricane Floyd and surrounding events for hazard mitigation purposes.

Recognizing that the overriding aim of the Hurricane Floyd supplemental funds is to clear the floodplain by helping occupants to move out of harm's way, we intend to use the funding to meet the needs of lower income households in the areas that are most affected by flood damage. We are allocating the $215 million among the States that received major disaster declarations due to Hurricane Floyd. The allocation will be based on the number and value of properties meeting the eligibility criteria whose owners express interest in participating in a buyout. We are requesting States by letter to provide this information to the Associate Director for Mitigation by January 31, 2000. As stated in the Act, allocations to States under this authority have no impact on the calculation of available funding under the Stafford Act (42 U.S.C. 5170c), the Hazard Mitigation Grant Program.

Separately, we will request States to provide feedback regarding several important issues related to the implementation of our grant programs that fund buyouts and relocations of floodprone property. We will use this feedback to evaluate the need for modifications to these grant programs.

This rule explains the process for States and us to prioritize projects to ensure funds are used in a cost-effective manner. We describe the program eligibility criteria in the rule to ensure States target properties severely impacted by Hurricane Floyd or surrounding events that would likely flood again in the future.

The rule and the program requirements are structured parallel to our Hazard Mitigation Grant Program (HMGP) program, which also has property acquisition authority. We expect to minimize the differences between the two programs and to simplify the administration of both programs in the field. The Act does contain several provisions that differ from the HMGP that States should note:

(a) Funds are to be used for acquisition/relocation projects only;

(b) To be eligible, projects may only include properties that:

(1) Are located in the Special Flood Hazard Area;

(2) Are the principal residence of the owner; and

(3) Were made uninhabitable by Hurricane Floyd or surrounding natural hazard event.

(c) Subgrantees may pay participating homeowners no more than the fair market value of the property before September 1, 1999.

The HMGP does not have the limitations described above.

We encourage States to implement this program in conjunction with the HMGP to the extent possible. States and applicants may use HMGP guidance materials for acquisition and relocation projects, including the HMGP Interim Desk Reference (FEMA–345) and the Property Acquisition Handbook (FEMA–317) to the extent that the guidance does not conflict with these regulations or the Act. For example, FEMA–345 and FEMA–317 provide model deed restrictions and easements and detailed procedures for avoiding duplication of benefits provided by other programs or insurance. The model deed language and the duplication of benefits review process apply to this special buyout authority as well.

Communities interested in participating should note that properties purchased with this grant funding must remain as open space in perpetuity and may receive no future disaster assistance from any Federal source. For example, public park facilities on purchased open space land are not eligible for our Public Assistance program funding if future flood disasters occur in the area.

States are responsible for measuring both the expected benefits of funded projects and actual program effectiveness after future flood events. This process will assist the State and us in assessing program results and improving future mitigation program implementation.

National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(vii). In addition, we will perform an environmental review under 44 CFR Part 10, Environmental Considerations, on each proposed acquisition project before funding and implementation.

Executive Order 12898, Environmental Justice

This rule will have no disproportionate, adverse impact on low-income or minority populations within the meaning of E.O. 12898. Properties in Special Flood Hazard Areas that have a high risk of flooding are frequently associated with depressed property values and inhabited by low-income residents. This is the case in many communities that were affected by Hurricane Floyd and that this rule targets for buyouts. The rule's effect of offering such populations more than post-event, current fair market value for their damaged residences to relocate voluntarily outside the flood hazard area helps give low-income homeowners the means to move to safer ground, which might not otherwise be available to them. In some cases, where very low-priced residences are acquired, the buyout offer may not be enough to pay for available housing outside the hazard area because the law caps the offer at pre-event value. In such cases we will coordinate with the State to help identify alternative funding sources for those buyouts or to cover the relocation differential.

Executive Order 12866, Regulatory Planning and Review

The rule sets out our administrative procedures for making grants available for acquiring and relocating houses damaged by Hurricane Floyd. Most of the $215,000,000 appropriation will be obligated within one year. As such the rule will have an effect on the economy of more than $100,000,000, the impact of which will promote public health and safety by providing low-income homeowners with the financial means to move voluntarily out of high-risk flood hazard areas. Therefore, this rule is a major rule as defined in 5 U.S.C. 804(2) and is an economically significant rule under Executive Order 12866. The Office of Management and Budget has reviewed this rule under Executive Order 12866.

Paperwork Reduction Act

The Federal Emergency Management Agency is submitting a request for review and approval of a new collection of information, which is contained in this interim rule. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulations 5 CFR 1320.13. FEMA is requesting that this information collection be approved by February 11, 2000, for use through July 2000.

FEMA expects to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). It also seeks comments concerning the collection of information, which is necessary for State and local officials to apply for the Hurricane Floyd Special Buyout Authority. The forms or formats—SF–424, Application for Federal Assistance; FEMA form 20–15, Budget Instructions—Construction Programs; Project Narrative (section 209.8(b)); FEMA form 20–16, 20–16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20–10, Financial Status Report; and the Performance/Progress Report format—serve as basic screening and referral documents and may be used in determining whether applicants meet the basic eligibility requirements of this Authority.

Supplementary Information. This collection is in accordance with FEMA's responsibilities under 44 CFR section 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance provided helps to alleviate the suffering and damage that result from major disasters and emergencies. Under the Consolidated Appropriations Act of FY2000, FEMA may provide assistance for the acquisition and relocation of properties affected by Hurrricane Floyd or surrounding events for hazard mitigation purposes.

Collection of Information.

Title. Hurricane Floyd Property Acquisition and Relocation Grants.

Type of Information Collection. New.

Form Numbers. SF–424, Application for Federal Assistance; FEMA form 20–15, Budget Information-Construction Programs; FEMA form 20–16, 20–16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20–10, Financial Status Report; and the Performance report format.

Abstract.

(1) *SF–424 facesheet.* This is a standard form used by applicants to accompany applications for Federal assistance. It provides the agency summary information about applicant organization and the type of assistance requested. Local governments may use the SF–424 to provide pertinent applicant profile information with their application. States may submit amendments to their original application by submitting an additional SF–424 that requests a revision to the original.

(2) *Budget forms.* This is a standard form which applicants submit with the application detailing the proposed budget for the grant. For construction projects, applicants complete FEMA form 20–15. FEMA will use this information to determine if the requested funding is reasonable and to perform a benefit-cost analysis on the proposed project (construction projects only).

(3) *Project Narrative.* The narrative statement, more commonly referred to as the project application, identifies the proposed measure to be funded and provides information supporting the projects eligibility. The narrative will contain nine essential elements: the description of the hazard/problem, proposed measures, location of project, proposed work schedule, an itemized list of expected benefits and estimated dollar values, alternative approaches considered to meet the objective, the surrounding environment and possible environmental impacts, existing resources in the project area, provide an analysis of the environmental effects of the proposed project and alternatives on the resources discussed above, provide environmental studies/reviews, if possible.

(4) *Assurances and certifications.* These are standard forms that are completed by the State. FEMA form 20–16 summarizes all assurances and certifications that the State must sign in order to receive grant assistance. FEMA forms 20–16 and 20–16(c) list assurances that the State must provide in order to receive assistance for construction programs. FEMA form 20–16c lists three certifications that the State must make in order to receive Federal assistance: lobbying; debarment, suspension, and other responsibility matters; and drug free workplace requirements.

(5) *Disclosure of Lobbying Activities.* The SF–LLL is a standard form disclosing lobbying activity on the part of grant recipients. These assurances are an integral element of the grant agreement between FEMA and the State, ensuring compliance with all applicable Federal statutes, executive orders, and regulations.

(6) *Financial Status Report.* The FEMA Form 20–10—Financial Status Report Form is used by Grantees, to give an accurate, current and complete disclosure, on a quarterly basis the financial results of financially assisted activities. Reporting must be made in accordance with the financial reporting requirements of the grant or subgrant. Form 20–10 is due thirty (30) days after the expiration or termination of grant support. Grantees are required to submit an original and two copies to the Regional Office. Grantees may use this form in dealing with their subgrantees.

(7) *Performance Report.* The State will use this format to report on the implementation schedule, any delays, projected overruns, and problems encountered.

Affected Public: State, local and tribal governments and Individuals and households. The forms are used to allow State and local officials to apply for the Hurricane Floyd Special Buyout Authority on behalf of their communities and citizens.

Estimated Total Annual Burden Hours.

Type of collection/forms	No. of respondents	Hours per response	Annual burden hours
SF–424 (Application facesheet)	213	.75	160
20–15 Budget—Construction	213	17.2	3,664
Project Narrative (section 209.8(b)	213	15	3,195
20–16 (Summary of assurances & certifications)	213	1.7	362
20–16b (Assurances, non-construction)	.....	included in 20–16	.....
20–16c (lobbying certification)	.....	included in 20–16	.....
SF–LLL (lobbying disclosure)	213	.5	107
Form 20–10—Financial Status Report 213× quarterly = 852	852	8	6,816
Performance Report 213 × quarterly = 852	852	4.2	3,578
Duplication of benefits review.	213	12.62	2,688
Communities Individual homeowners	5,375	1	5,375
Agreement—Settlement/Deeds/Easement	213	6.31	1,344
Communities Individual homeowners	5,375	1	5,375
Individual Homeowners—Initial Meeting/Letters	5,375	2	10,750
Individual Homeowners—Appraisal/Inspection Visit, Review, Offer	5,375	1	5,375
Total Burden	.....		48,789

Estimated Cost. We have not calculated the costs associated with this collection due to the emergency nature of the funding availability and grant approval process. However, we believe there are few additional costs associated with this authority. States may use existing systems for submitting grant applications and reporting.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSEE:

Interested persons should submit written comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 within 30 days of this notice. FEMA will continue to accept comments for an additional 30 days. Send written comments on the collection of information, including the burden estimate to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e-mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Executive Order 12612, Federalism

We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day grant activities required by Pub. L. 106–113, which prescribes how the $215,000,000 appropriation will be transferred through grants to certain States.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control No. 3067–0279. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 209

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

Accordingly, we amend Chapter I, Subchapter D, by adding Part 209 to read as follows:

PART 209— HURRICANE FLOYD PROPERTY ACQUISITION AND RELOCATION GRANTS

Sec.

Authority: Pub. L. 106–113, Appendix E—H.R. 3425; Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979

Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

§ 209.1 Purpose.

This part provides guidance on the administration of grants made under the Consolidated Appropriations Act for FY 2000, Pub. L. 106–113, which provides $215 million for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

§ 209.2 Definitions.

Except as noted in this part, the definitions listed at 44 CFR 206.2 apply to the implementation of this part.

§ 209.3 Roles and responsibilities.

We describe specific responsibilities of program participants throughout this part. The following materials describe the general roles of FEMA, the State, and communities or other organizations that receive grant assistance.

(a) *Federal.* The Director will allocate available funding to States that received major disaster declarations resulting from Hurricane Floyd and surrounding events. The Regional Directors will provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State.* The State will be the Grantee to which FEMA awards funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State and provide technical assistance and oversight to subgrantees for project development and implementation. The State will report program progress and results to us. Native American tribes will be the grantee and carry out ''state'' roles when they apply directly to FEMA.

(c) *Subgrantee.* The subgrantee (a State agency, local government, or private non-profit organization) will coordinate with interested homeowners to complete an application to the State and implement all approved projects. The subgrantee generally takes title to all property and manages it as open space. The subgrantee is accountable to the State for the use of funds.

§ 209.4 Allocation and availability of funds.

(a) The Director will allocate available funds based on the number and value of properties meeting the eligibility criteria whose owners have expressed interest in participating in a buyout.

(b) The Director may reallocate funds for which we do not receive and approve adequate applications. We will obligate all available funds by January 1, 2002, unless extenuating circumstances exists.

§ 209.5 Applicant eligibility.

The following are eligible to apply to the State for a grant:

(a) State and local governments;

(b) Indian tribes or authorized tribal organizations. A tribe may apply either to the State or directly to FEMA.

(c) Private nonprofit organizations with a conservation purpose as qualified under section 170(h) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 170(h), and applicable regulations promulgated thereunder.

§ 209.6 Project eligibility

(a) *Eligible types of project activities.* This grant authority is for projects to acquire and demolish or relocate floodprone properties. Approved projects will meet the following criteria and comply with program requirements.

(b) *Eligibility criteria.* To be eligible, projects must:

(1) Be cost effective. The State will complete a benefit-cost analysis, using a FEMA-approved methodology. We will review the State's analysis.

(2) Include only properties that:

(i) The owner agrees to sell voluntarily;

(ii) Are located in the Special Flood Hazard Area;

(iii) Served as the principal residence for the owner (*i.e.,* meets criteria for owner-occupied, primary residence under our Individual Assistance program); and

(iv) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of Hurricane Floyd or surrounding natural hazard events.

(3) Conform with 44 CFR Part 9, Floodplain Management and Protection of Wetlands; 44 CFR Part 10, Environmental Considerations; and any applicable environmental and historic preservation laws and regulations.

§ 209.7 Priorities for project selection.

States will set priorities in their State Hazard Mitigation Plan (State buyout plan) to use as the basis for selecting projects for funding. The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States may update their Hazard Mitigation Grant Program administrative plan to incorporate administration and project selection under this authority.

§ 209.8 Application and review process.

(a) *Timeframes.* States will set local application deadlines. States must forward all applications by April 30, 2000. We will fund projects as we receive and approve them. The Regional Director may extend the deadline by up to 60 days, upon a State's request, if extenuating circumstances prevent the State from meeting the deadline.

(b) *Format.* The State will forward its application to the Regional Director. The Application will include a Standard Form (SF) 424, Application for Federal Assistance, FEMA Form 20–16B, Assurances for Construction Programs, attached community project applications (buyout plans) selected by the State, and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. Community project applications will include:

(1) Community applicant information, including contact names and numbers;

(2) Summary project information;

(3) Description of the problem addressed by the proposed project;

(4) Description of the applicant's decision-making process, including alternatives considered;

(5) Project description, including property locations and scope of activities;

(6) Project cost estimate and match source;

(7) Open space use description and maintenance assurance;

(8) Cost-effectiveness information, or State's benefit-cost analysis;

(9) Environmental and historic preservation information; and

(10) Attachments as necessary (property site inventory, location map, FIRM, etc);

(c) *FEMA review.* FEMA will review the State's eligibility determination and either approve, deny, or request additional information within 60 days. The Regional Director may extend this timeframe if complicated issues arise.

§ 209.9 Appeals.

The State may appeal decisions by FEMA regarding the eligibility of submitted applications within 60 days of receipt of the decision. The format and timelines for the appeal must conform to 44 CFR 206.440.

§ 209.10 Project implementation requirements.

Subgrantees must enter into an agreement with the State, with the concurrence of the Regional Director, that provides the following assurances:

(a) The subgrantee will administer the grant and implement the project in accordance with program requirements, 44 CFR parts 13 and 14, the grant agreement, and with applicable Federal, State, and local laws and regulations.

(b) Participating property owners may receive assistance up to the fair market

value of their real property as of September 1, 1999 (reduced by any potential duplication of benefits from other sources).

(c) The following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed (''the property''):

(1) The property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(2) No new structure(s) will be built on the property except for the following:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public rest room; or

(iii) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.

(3) After completing the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(4) Any structures built on the property according to paragraph (c)(2) of this section, must be located to minimize the potential for flood damage, be floodproofed, or be elevated to the Base Flood Elevation plus one foot of freeboard.

(5) Every two years on October 1st, the subgrantee will report to the State, certifying that the property continues to be maintained consistent with the provisions of the agreement. The State will report the certification to us.

(d) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, permeable parking lots, and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, or other uses that obstruct the natural and beneficial functions of the floodplain.

§ 209.11 Grant administration.

Cost share. We may contribute up to 75 percent of the total eligible costs. The State must ensure that non-Federal sources contribute not less than 25 percent of the total eligible costs for the grant. The State or any subgrantee cannot use funds that we provide under this Act as the non-Federal match for other Federal funds nor can the State or any subgrantee use other Federal funds as the required non-Federal match for these funds, except as provided by statute.

(b) *Allowable costs.* A State may find guidance on allowable costs for States and subgrantees in Office of Management and Budget (OMB) Circular A–87 and A–122 on the Cost Principles. States may use up to 7% of these funds for costs to manage the grant. The State should include management costs in its application. Subgrantees must include reasonable costs to administer the grant as a direct project cost in their budget.

(c) *Progress reports.* The State must provide a quarterly progress report to us under 44 CFR 13.40, indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, scope of work, or project costs that may result in noncompliance with the approved grant conditions.

(d) *Financial reports.* The State must provide a quarterly financial report to us under 44 CFR 13.41.

§ 209.12 Oversight and results.

(a) *FEMA oversight.* Our Regional Directors are responsible for overseeing this grant authority and for ensuring that States and subgrantees meet all program requirements. Regional Directors will review program progress quarterly.

(b) *Monitoring and enforcement.* Subgrantees, States, and FEMA will monitor the properties purchased under this authority and ensure they are maintained in open space use. FEMA and the State may enforce the agreement by taking any measures they deem appropriate.

(c) *Program results.* The State will review the effectiveness of approved projects after each future flood event in the affected area to monitor whether projects are resulting in expected savings. The State will report to FEMA on program effectiveness after project completion and after each subsequent flood event.

Dated: February 7, 2000.

James L. Witt,

Director.

[FR Doc. 00–3235 Filed 2–10–00; 8:45 am]

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A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

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